

EXHIBIT 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

McKesson Corp., a Delaware Corp.,
Plaintiff,

No. C-07-5715 WDB

v.

**ORDER RE MARCH 12, 2008,
HEARING**

Familymeds Group, Inc., f/k/a
Drugmax, Inc., a Connecticut
corporation,

Defendants.

Familymeds Group, Inc., f/k/a
Drugmax, Inc., a Connecticut
corporation,

Counterclaimant

v.

McKesson Corp., a Delaware
corporation,

Counterdefendant.

Familymeds, Inc., a Connecticut
corporation,

Cross-complainant

v.

McKesson Corp., a Delaware
corporation,

Cross-defendant.

1
EXHIBIT 1

1 The Court wants the clients in this case to understand what is driving the
2 orders the Court entered orally at the initial case management conference on March
3 12, 2008, and that are summarized below. One of the Court's responsibilities to
4 the litigants is to do what it can to keep litigation transaction costs from growing
5 out of all proportion to the amounts at stake under the claims in the case. The
6 Court also has a duty, imposed by the Federal Rules of Civil Procedure, to do what
7 it can to promote the "just, speedy, and inexpensive determination of every action."

8
9 The procedure the Court has ordered is informed by responsiveness to these
10 merging duties and by the Court's sense that what is at the center of this case is a
11 matter of accounting that parties who are proceeding in good faith should be able
12 to digest in a straightforward exchange of information.

13 For several years, the parties and their predecessors have been involved in a
14 high volume business relationship in which some \$170,000,000 has changed
15 hands. It beggars the Court's imagination that, against that background of deep
16 experience and considerable business sophistication, the parties cannot figure out
17 what amounts remain owing. We don't need a lawsuit; we need ethical business
18 people to determine responsibly what is owed and to get that amount promptly
19 paid.

20 So, between now and the end of April, the parties must sit down in the same
21 room with one another, accompanied by appropriately knowledgeable persons, and
22 try (really) to resolve these accounting matters. If the parties fail, after trying in
23 good faith, to reach an agreement, the Court will move this case toward an
24 adjudicated disposition as fast as the mandates of due process permit.

25 **Before Wednesday, April 30, 2008,** the parties must exchange information
26 about the disputed accounts and must meet to discuss settlement of the parties'
27 claims. The parties must produce all representatives necessary to facilitate this
28

1 exchange of information including, without limitation, those familiar with the
2 necessary computer systems, billing processes, and rules applicable to pricing.

3 The Court hereby enters a PROTECTIVE ORDER pursuant to which all
4 information exchanged among the parties pursuant to this Order must be treated as
5 CONFIDENTIAL unless and until otherwise ordered by the Court.

6 The Court prohibits the parties from filing additional motions or conducting
7 formal discovery until after April 30, 2008.

8 **By Monday April 28, 2008, at noon**, the parties must file a joint case
9 management conference statement describing the status of the parties' efforts.

10 **On Wednesday, April 30, 2008, at 3:00 p.m.**, the Court will conduct a
11 follow up case management conference. Any party may appear by telephone and
12 must call the Court's staff by April 28, 2008, at (510)-637-3324 to arrange to
13 appear by telephone.

14 The Court CONTINUES the hearing on McKesson's Motion to Dismiss to
15 **Wednesday, April 30, 2008, at 3:00 p.m.** The hearing will go forward following
16 the status conference unless McKesson has withdrawn its Motion prior to that time.

17 The Court ORDERS counsel to deliver a copy of this Order promptly to
18 their clients.

19 IT IS SO ORDERED.

20 Dated: March 13, 2008

21 
22 WAYNE D. BRAZIL
23 United States Magistrate Judge

24
25
26
27
28
Copies to: parties, wdb, stats

EXHIBIT 2

1 JEFFER, MANGELS, BUTLER & MARMARO LLP
 ROBERT C. GEBHARDT (Bar No. 48965), rcg@jmbm.com
 2 MICHAEL A. GOLD (Bar No. 90667), mag@jmbm.com
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 5

6 Attorneys for Plaintiffs FAMILYMEDS, INC., a Connecticut
 corporation and FAMILYMEDS GROUP, INC. a Nevada
 7 corporation, f/k/a DRUGMAX, INC., a Nevada corporation

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10
 11 FAMILYMEDS, INC., a Connecticut
 corporation; and FAMILYMEDS GROUP,
 12 INC. a Nevada corporation, f/k/a DRUGMAX,
 INC., a Nevada corporation,

13 Plaintiffs,

14 v.

15 MCKESSON CORPORATION, a Delaware
 corporation; and D&K HEALTHCARE
 16 RESOURCES LLC, a Delaware limited
 liability company, f/k/a D&K HEALTHCARE
 17 RESOURCES, INC., a Delaware corporation,

18 Defendants.
 19

CASE NO.

CV 08

2850

COMPLAINT FOR:

- 1) SPECIFIC PERFORMANCE OF CONTRACT (Two Counts); and
- 2) ACCOUNTING (Four Counts).

DEMAND FOR JURY TRIAL

20 Plaintiffs Familymeds, Inc., a Connecticut corporation ("Familymeds, Inc.") and
 21 Familymeds Group, Inc. a Nevada corporation, f/k/a DrugMax, Inc., a Nevada corporation
 22 ("Familymeds Group") (collectively, "Plaintiffs") hereby complain against McKesson
 23 Corporation, a Delaware corporation ("McKesson") and D&K Healthcare Resources LLC, a
 24 Delaware limited liability company, f/k/a D&K Healthcare Resources, Inc., a Delaware corporation
 25 ("D&K") (collectively, "Defendants") as follows:

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27 ///

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 Butler & Marmaro LLP

ORIGINAL

FILED
 JUN 6 2008
 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

E-filing

BZ

I.

GENERAL ALLEGATIONS**JURISDICTION**

1. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because this is a civil action between citizens of different states and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

Plaintiffs

2. Familymeds, Inc. is a Connecticut corporation with its principal place of business at 2 Bridgewater Road, Farmington, Connecticut 06032.

3. Familymeds Group is a Nevada corporation with its principal place of business at 2 Bridgewater Road, Farmington, Connecticut 06032.

4. On or about November 12, 2004, Familymeds Group, Inc., a Connecticut corporation merged with and into DrugMax, Inc., a Nevada corporation ("**DrugMax**"), leaving DrugMax as the surviving corporation, and thereafter, on or about July 10, 2006, DrugMax amended its articles of incorporation to change its name to Familymeds Group, Inc., a Nevada corporation.

5. Familymeds, Inc. is the wholly-owned subsidiary of Familymeds Group.

Defendants

6. Plaintiffs are informed and believe, and on that basis allege, that at all times herein mentioned, McKesson is and was a Delaware corporation with its principal place of business at One Post Street, San Francisco, California 94104.

7. Plaintiffs are informed and believe, and on that basis allege, that on or about August 30, 2005, McKesson's wholly owned subsidiary, Spirit Acquisition Corporation, a Delaware corporation, merged with and into D&K Healthcare Resources, Inc., leaving D&K Healthcare Resources, Inc. as the surviving corporation and thereby rendering D&K Healthcare Resources, Inc. a wholly-owned subsidiary of McKesson.

8. Plaintiffs are informed and believe, and on that basis allege, that from the date of its formation of December 16, 1987, until December 31, 2005, D&K was a corporation formed under the laws of Delaware.

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1 9. Plaintiffs are informed and believe, and on that basis allege, that on or about January
2 1, 2006, D&K converted from being a Delaware corporation into a Delaware limited liability
3 company, and has thereafter remained as a Delaware limited liability company with McKesson as
4 its sole member.

5 10. Plaintiffs are informed and believe, and on that basis allege, that at all times herein
6 mentioned, D&K's principal place of business is and was at 8235 Forsyth Blvd., St. Louis, Missouri
7 63105.

8 11. Plaintiffs are informed and believe, and on that basis allege, that McKesson and
9 D&K share, and are controlled by, an interlocking directorate.

10 **Amount in Controversy**

11 12. The amount in controversy of each of the claims of Familymeds, Inc. and
12 Familymeds Group against McKesson and D&K each respectively exceed the sum or value of
13 \$75,000.

14 **VENUE**

15 13. All actions complained of herein took place within the jurisdiction of the United
16 States District Court, Northern District of California. Accordingly, venue is invoked pursuant to 28
17 U.S.C. § 1391(a).

18 **INTRADISTRICT ASSIGNMENT**

19 14. A substantial part of the events, acts or omissions giving rise to the claims for relief
20 set forth herein occurred in the City and County of San Francisco.

21 **II.**

22 **FACTUAL BACKGROUND**

23 **The First Agreement**

24 15. On or about December 28, 2004, Familymeds, Inc., Valley Drug Company South, a
25 Louisiana corporation ("**Valley Drug**") and D&K entered into that certain written Prime Warehouse
26 Supplier Agreement (the "**First Agreement**") for fair and valuable consideration, which provided,
27 *inter alia*, for D&K to sell and Familymeds, Inc. and Valley Drug to buy certain "Products" (as that
28 term is defined therein).

1 16. The First Agreement provided for a term of two (2) years, commencing on
2 December 28, 2004.

3 **The First Amendment**

4 17. On or about December 27, 2005, DrugMax (which amended its articles of
5 incorporation on July 10, 2006, to change its name to Familymeds Group, Inc., a Nevada
6 corporation and is referred to herein as "Familymeds Group"), Familymeds, Inc., and D&K entered
7 in that certain written First Amendment to Prime Warehouse Supplier Agreement for fair and
8 valuable consideration, which provided, *inter alia*, to amend certain terms of the First Agreement
9 (the First Agreement, as amended, shall be referred to herein as the "**First Amendment**").

10 18. The First Amendment was negotiated and drafted by McKesson's San Francisco
11 corporate office and legal department.

12 19. Plaintiffs are informed and believe, and on that basis allege, that the First
13 Amendment was executed by Paul C. Julian, who was also a director and/or officer of McKesson at
14 the time of execution of the First Amendment.

15 20. The First Amendment provided, *inter alia*, that Familymeds, Inc. and Familymeds
16 Group were obligated to "fully participate in the McKesson OneStop Generics Program through its
17 auto-substitution feature and to thereby designate this program as Customer's primary source of
18 generic pharmaceuticals..." (the "**McKesson OneStop Generics Program**").

19 21. Both Familymeds, Inc. and Familymeds Group fully participated in the McKesson
20 OneStop Generics Program, as required under the First Amendment.

21 22. The First Amendment provided, *inter alia*, that all notices thereunder shall be served
22 on McKesson Corporation, One Post Street, San Francisco, California 94104.

23 23. The First Amendment in Paragraph 10 (amending Section 8 of the First Agreement),
24 provided that Familymeds, Inc. and Familymeds Group were entitled to audit documentation
25 pertaining to Specially Priced Products (as that term is defined therein) (the "**Accounting**
26 **Obligation**");

27 ...Customer [Familymeds, Inc. and Familymeds Group] may audit
28 Customer's purchase history and pricing of Specially Priced Products
 charged to Customer by D&K as reasonably requested. D&K agrees

1 to provide Customer with the above-referenced purchase history upon
2 Customer's written request.

3 24. Beginning in or around February 2006, and until the end of the term of the First
4 Amendment in December 2006, McKesson sent to Familymeds, Inc. and Familymeds Group all
5 invoices for payment which arose under the First Amendment.

6 25. Beginning in or around February 2006, and until the end of the term of the First
7 Amendment in December 2006, Familymeds, Inc. and Familymeds Group, by direction, request,
8 and demand of D&K, sent all payments arising under the First Amendment to McKesson.

9 **The Request**

10 26. In a letter dated September 18, 2007, and addressed to Ana Schrank, Vice President
11 of Financial Services, McKesson Corporation, One Post Street, San Francisco, CA 94104, James E.
12 Searson, an officer and director of both Familymeds, Inc. and Familymeds Group, requested
13 documentation pertaining to prior account statements, Specially Priced Products (as that term is
14 defined in the First Amendment), charges, credits, pricing adjustments, and payments (the
15 "Documentation") (the "Request").

16 27. The Documentation sought in the Request is within the exclusive possession and
17 control of D&K and/or McKesson.

18 28. The Request was wrongfully refused and wholly denied.

19 29. Familymeds is informed and believes, and based thereon alleges, that Familymeds,
20 Inc. and Familymeds Group have been wrongfully overcharged certain amounts under the First
21 Amendment and credits due under the First Amendment were improperly withheld; however, the
22 Documentation necessary to determine the amount of these improper overcharges and improperly
23 withheld credits is within D&K's and/or McKesson's exclusive possession and control and the
24 September 18, 2007 Request for such information was wrongfully denied.

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III.

FIRST CLAIM FOR RELIEF

(Specific Performance of Contract)

Count One - Familymeds, Inc. against D&K

30. Familymeds, Inc. incorporates by reference the allegations contained in Paragraphs 1 through 29 above.

31. The Accounting Obligation under the First Amendment created an express obligation for D&K to provide the Documentation to Familymeds, Inc.

32. The terms of the First Amendment, including the Accounting Obligation, are sufficiently precise, certain, and definite for enforcement by this Court.

33. The terms of the First Amendment, including the Accounting Obligation, are fair, just, and reasonable under all of the circumstances, and adequate consideration was provided by and to all parties.

34. The terms of the First Amendment, including the Accounting Obligation, are mutually available and can be enforced by and against any party to the First Amendment.

35. Familymeds, Inc. has duly performed all conditions precedent on its part required to be performed under the terms of the First Amendment, except as to those conditions for which performance was excused by D&K's material breaches.

36. D&K has breached the First Amendment by wrongfully refusing the Request, thereby breaching its Accounting Obligation.

37. Familymeds, Inc. requests that this Court order D&K to specifically perform in accordance with the terms of the First Amendment by providing the Documentation as required by the Accounting Obligation.

38. No adequate remedy at law is available to Familymeds, Inc.

WHEREFORE, Familymeds, Inc. prays for judgment as set forth herein.

Count Two - Familymeds Group against D&K

39. Familymeds Group incorporates by reference the allegations contained in Paragraphs 1 through 29 above.

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1 unissued and improperly withheld credits and overcharges which cannot be ascertained without an
2 accounting, the means of which are in the exclusive knowledge and control of D&K.

3 51. D&K has the obligation and the ability to account to Familymeds, Inc.

4 52. No adequate remedy is available to Familymeds, Inc. at law and thus an accounting
5 is necessary to preserve Familymeds, Inc.'s rights.

6 WHEREFORE, Familymeds, Inc. prays for judgment as set forth herein.

7 **Count Two - Familymeds, Inc. against McKesson**

8 53. Familymeds, Inc. incorporates by reference the allegations contained in Paragraphs 1
9 through 29 above.

10 54. A relationship exists between Familymeds, Inc. and McKesson, and circumstances
11 require, that McKesson provide to Familymeds, Inc. an accounting in equity.

12 55. An unknown balance is due under the First Amendment to Familymeds, Inc. for
13 unissued and improperly withheld credits and overcharges which cannot be ascertained without an
14 accounting, the means of which are in the exclusive knowledge and control of McKesson.

15 56. McKesson has the obligation and the ability to account to Familymeds, Inc.

16 57. No adequate remedy is available to Familymeds, Inc. at law and thus an accounting
17 is necessary to preserve Familymeds, Inc.'s rights.

18 WHEREFORE, Familymeds, Inc. prays for judgment as set forth herein.

19 **Count Three - Familymeds Group against D&K**

20 58. Familymeds Group incorporates by reference the allegations contained in Paragraphs
21 1 through 29 above.

22 59. A relationship exists between Familymeds Group and D&K, and circumstances
23 require, that D&K provide to Familymeds Group an accounting in equity.

24 60. An unknown balance is due under the First Amendment to Familymeds Group for
25 unissued and improperly withheld credits and overcharges which cannot be ascertained without an
26 accounting, the means of which are in the exclusive knowledge and control of D&K.

27 61. D&K has the obligation and the ability to account to Familymeds Group.

28 62. No adequate remedy is available to Familymeds Group at law and thus an accounting

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1 is necessary to preserve Familymeds Group's rights.

2 WHEREFORE, Familymeds Group prays for judgment as set forth herein.

3 **Count Four - Familymeds Group against McKesson**

4 63. Familymeds Group incorporates by reference the allegations contained in Paragraphs
5 1 through 29 above.

6 64. A relationship exists between Familymeds Group and McKesson, and circumstances
7 require, that McKesson provide to Familymeds Group an accounting in equity.

8 65. An unknown balance is due under the First Amendment to Familymeds Group for
9 unissued and improperly withheld credits and overcharges which cannot be ascertained without an
10 accounting, the means of which are in the exclusive knowledge and control of McKesson.

11 66. McKesson has the obligation and the ability to account to Familymeds Group.

12 67. No adequate remedy is available to Familymeds Group at law and thus an accounting
13 is necessary to preserve Familymeds Group's rights.

14 WHEREFORE, Familymeds Group prays for judgment as set forth herein.

15 V.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs pray for judgment against D&K and McKesson as follows:

18 **On The First Claim For Relief For Specific Performance Of Contract:**

19 **Count One - Familymeds, Inc. against D&K**

20 1. For specific enforcement of the First Amendment compelling D&K to comply with
21 its Accounting Obligation;

22 2. For costs of suit herein incurred; and

23 3. For such other and further relief as the Court may deem proper.

24 **Count Two - Familymeds Group against D&K**

25 1. For specific enforcement of the First Amendment compelling D&K to comply with
26 its Accounting Obligation;

27 2. For costs of suit herein incurred; and

28 3. For such other and further relief as the Court may deem proper.

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On the Second Claim For Relief Accounting In Equity:**Count One - Familymeds, Inc. against D&K**

1. For an order compelling D&K to provide to Familymeds, Inc. an accounting in equity;
2. For costs of suit herein incurred; and
3. For such other and further relief as the Court may deem proper.

Count Two - Familymeds, Inc. against McKesson

1. For an order compelling McKesson to provide to Familymeds, Inc. an accounting in equity;
2. For costs of suit herein incurred; and
3. For such other and further relief as the Court may deem proper.

Count Three - Familymeds Group against D&K

1. For an order compelling D&K to provide to Familymeds Group an accounting in equity;
2. For costs of suit herein incurred; and
3. For such other and further relief as the Court may deem proper.

Count Four - Familymeds Group against McKesson

1. For an order compelling McKesson to provide to Familymeds Group an accounting in equity;
2. For costs of suit herein incurred; and
3. For such other and further relief as the Court may deem proper.

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1 DATED: June 6, 2008

JEFFER, MANGELS, BUTLER & MARMARO LLP
ROBERT C. GEBHARDT
MICHAEL A. GOLD
MATTHEW S. KENEFICK

4 By: 

MATTHEW S. KENEFICK
Attorneys for Plaintiffs FAMILYMEDS, INC., a
Connecticut corporation and FAMILYMEDS GROUP,
INC., a Nevada corporation, f/k/a DRUGMAX, INC., a
Nevada corporation

9 **JURY DEMAND**

10 Plaintiffs demand a jury trial on all issues so triable.

11 DATED: June 6, 2008

JEFFER, MANGELS, BUTLER & MARMARO LLP
ROBERT C. GEBHARDT
MICHAEL A. GOLD
MATTHEW S. KENEFICK

14 By: 

MATTHEW S. KENEFICK
Attorneys for Plaintiffs FAMILYMEDS, INC., a
Connecticut corporation and FAMILYMEDS GROUP,
INC., a Nevada corporation, f/k/a DRUGMAX, INC., a
Nevada corporation

JMBM : Jeffer Mangels
Butler & Marmaro LLP

EXHIBIT 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RELATED CASE ORDER

A Motion for Administrative Relief to Consider Whether Cases Should be Related or a *Sua Sponte* Judicial Referral for Purpose of Determining Relationship (Civil L.R. 3-12) has been filed. The time for filing an opposition or statement of support has passed. As the judge assigned to the earliest filed case below that bears my initials, I find that the more recently filed case(s) that I have initialed below are related to the case assigned to me, and such case(s) shall be reassigned to me. Any cases listed below that are not related to the case assigned to me are referred to the judge assigned to the next-earliest filed case for a related case determination.

C 07-05715 WDB McKesson Corporation v. Familymeds Group, Inc.

C 08-02850 BZ Familymeds, Inc. Et al v. McKesson Corporation et al

I find that the above case is related to the case assigned to me. WDB

ORDER

Counsel are instructed that all future filings in any reassigned case are to bear the initials of the newly assigned judge immediately after the case number. Any case management conference in any reassigned case will be rescheduled by the Court. The parties shall adjust the dates for the conference, disclosures and report required by FRCivP 16 and 26 accordingly. Unless otherwise ordered, any dates for hearing noticed motions are vacated and must be re-noticed by the moving party before the newly assigned judge; any deadlines set by the ADR Local Rules remain in effect; and any deadlines established in a case management order continue to govern, except dates for appearance in court, which will be rescheduled by the newly assigned judge.

Dated: 6-18-08

Wayne D. Brazil
Magistrate Judge Wayne D. Brazil

CLERK'S NOTICE

The court has reviewed the motion and determined that no cases are related and no reassignments shall occur.

Richard W. Wicking, Clerk

DATED: _____

By: _____
Deputy Clerk

CERTIFICATE OF SERVICE

I certify that on the date stated below, I lodged a copy of this order with each judicial officer and I mailed a copy to each counsel of record or *pro se* party in the cases listed above.

DATED: 6/19/2008

Richard W. Wieking, Clerk

By: Cynthia Sevakar

Deputy Clerk

Copies to: Courtroom Deputies
Case Systems Administrators
Counsel of Record

Entered into Assignment Program: 6/19/08 (date) CL

EXHIBIT 4

JEFFER, MANGELS, BUTLER & MARMARO LLP
 ROBERT C. GEBHARDT (Bar No. 48965), rcg@jmbm.com
 MICHAEL A. GOLD (Bar No. 90667), mag@jmbm.com
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Attorneys for Defendant and Counterclaimant FAMILYMEDS
 GROUP, INC., f/k/a DRUGMAX, INC., a Nevada corporation and
 Cross-Complainant FAMILYMEDS, INC., a Connecticut
 corporation

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

MCKESSON CORPORATION, a Delaware
 corporation,

Plaintiff,

v.

FAMILYMEDS GROUP, INC., f/k/a
 DRUGMAX, INC., a Nevada corporation,

Defendant.

FAMILYMEDS GROUP, INC., f/k/a
 DRUGMAX, INC., a Nevada corporation,

Counterclaimant,

v.

MCKESSON CORPORATION, a Delaware
 corporation,

Counterdefendant.

FAMILYMEDS, INC., a Connecticut
 corporation,

Cross-Complainant,

v.

MCKESSON CORPORATION, a Delaware
 corporation,

Cross-Defendant.

CASE NO. CV07-5715 WDB

**FIRST SET OF INTERROGATORIES OF
 FAMILYMEDS GROUP, INC., F/K/A
 DRUGMAX, INC., A NEVADA
 CORPORATION**

Complaint filed: Nov. 9, 2007
 Counterclaim filed: Dec. 17, 2007
 Cross-Complaint Filed: Dec. 17, 2007

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PRINTED ON
 RECYCLED PAPER

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EXHIBIT 4

- 1 -

CV07-5715 WDB
 INTERROGATORIES, SET ONE

PROPOUNDING PARTY: Defendant and Counterclaimant Familymeds Group, Inc.,
f/k/a DrugMax, Inc., a Nevada corporation
("PROPOUNDING PARTY")

RESPONDING PARTY: McKesson Corporation, a Delaware corporation
("RESPONDING PARTY")

SET NO. One (1)

Propounding Party requests that Responding Party answer, under oath, pursuant to Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories within thirty (30) days from the date of this request.

GENERAL INSTRUCTIONS

A. It is intended by these interrogatories to discover all information available to Responding Party, not just matters actually known. This includes non-privileged information known to, or obtainable by, Responding Party's respective attorneys, investigators, adjusters, representatives, insurance carriers, agents, employees, or anyone acting in Responding Party's behalf or their behalf. Federal Rule of Civil Procedure 33(a); Continental Ill. Nat'l Bank & Trust Co. of Chicago v. Caton, 136 F.R.D. 682, 686 (D KS 1991); General Dynamics Corp. v. Selb Mfg. Co., 481 F.2d 1204, 1210 (8th Cir. 1973).

B. Each interrogatory must be responded to separately and fully. The response may be either an answer or objection. If an objection, the reasons for the objection must be stated. When objection is made to part of an interrogatory, the remainder of the interrogatory must be answered. Federal Rule of Civil Procedure 33(b)(1).

C. Each interrogatory be responded to separately, fully, and shall be complete in itself. Scaife v. Boenne, 191 F.R.D. 590, 594 (ND IN 2000).

DEFINITIONS

1. The term "**DOCUMENTS**," as used herein, means all tangible items within the scope of Federal Rule of Civil Procedure 34, including without limitation correspondence, communications, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, check statements, receipts, summaries, pamphlets, books, interoffice or intraoffice communications, telephone message slips, notations, bulletins, drawings, plans, computer printouts,

1 teletypes, telefaxes, invoices, worksheets, ledger books, books of account and all drafts, alterations,
 2 modifications, changes and amendments of any of the foregoing. These terms include all graphic or
 3 aural records and representations of any kind, including without limitation photographs, charts,
 4 graphs, microfiche, microfilm, videotape recordings, motion pictures and electronic, mechanical or
 5 electrical records or recordation of any kind including without limitation electronic mail
 6 communications, computer disks and diskettes, computer input or output, computer hard drive files,
 7 tapes, cassettes, disks and recordings. These terms include all documents in any language.

8 2. The terms "YOU" and "YOUR" as used herein mean the **RESPONDING PARTY**
 9 and any person acting on the **RESPONDING PARTY's** behalf, including, but not limited to,
 10 agents, employees, attorneys, accountants, investigators, partners, representatives and insurance
 11 companies.

12 3. The term "**FAMILYMEDS GROUP**," as used herein, means Familymeds Group,
 13 Inc. a Nevada corporation, f/k/a DrugMax, Inc., a Nevada corporation.

14 4. The term "**SKU**," as used herein, means unique stock keeping unit.

15 5. The term "**NDC**," as used herein, means National Drug Code(s).

16 6. The term "**SECOND AGREEMENT**," as used herein, means that certain written
 17 Supply Agreement by and between Familymeds Group, Inc. and McKesson Corporation and dated
 18 effective as of December 28, 2006, a copy of which is attached hereto as **EXHIBIT 1**.

19 7. The terms "**PRODUCT**," "**COST OF GOODS**," "**SPECIALLY PRICED**
 20 **MERCHANDISE**," "**NET BILLED**," and "**ONESTOP GENERICS**," as used herein in the
 21 singular and/or plural form, shall each assume the respective meanings ascribed thereto in the
 22 **SECOND AGREEMENT**.

23 8. The term "**AWP**," as used herein, means the McKesson Average Wholesale Price.

24 **FIRST SET OF INTERROGATORIES**

25 **INTERROGATORY NO. 1:**

26 State the **COST OF GOODS** for any and all **PRODUCTS** that **FAMILYMEDS**
 27 **GROUP** purchased from **YOU** pursuant to the **SECOND AGREEMENT**, identifying each
 28 **PRODUCT**, the date of purchase, the invoice number, the **SKU** and the **NDC**.

INTERROGATORY NO. 2:

For each **PRODUCT** identified in **YOUR** response to Interrogatory Number 1, explain how **YOU** calculated the **COST OF GOODS**.

INTERROGATORY NO. 3:

For each **PRODUCT** identified in **YOUR** response to Interrogatory Number 1, state the manufacturer's published acquisition cost as of the date of each purchase identified in said response.

INTERROGATORY NO. 4:

For each **PRODUCT** identified in **YOUR** response to Interrogatory Number 1, state the actual invoice price paid by **YOU**.

INTERROGATORY NO. 5:

For each **PRODUCT** identified in **YOUR** response to Interrogatory Number 1, state the amount of cash rebates that **YOU** received.

INTERROGATORY NO. 6:

For each **PRODUCT** identified in **YOUR** response to Interrogatory Number 1, state the amount of bonus goods that **YOU** received.

INTERROGATORY NO. 7:

For each **PRODUCT** identified in **YOUR** response to Interrogatory Number 1, state the amount of off-invoice allowances the **YOU** received.

INTERROGATORY NO. 8:

For each **PRODUCT** identified in **YOUR** response to Interrogatory Number 1, identify any and all manufacturers' deal prices that **YOU** received.

INTERROGATORY NO. 9:

Identify each **PRODUCT** that **FAMILYMEDS GROUP** purchased from **YOU** pursuant to the **SECOND AGREEMENT** and was classified as **SPECIALLY PRICED MERCHANDISE**, providing the date of purchase, the invoice number, the price **YOU** charged **FAMILYMEDS GROUP**, the **SKU**, and the **NDC**.

///

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INTERROGATORY NO. 10:

State the actual price paid by **YOU** for each **PRODUCT** identified in **YOUR** response to Interrogatory Number 9.

INTERROGATORY NO. 11:

Describe in detail how **YOU** calculated the price that **YOU** charged to **FAMILYMEDS GROUP** for each **PRODUCT** identified in **YOUR** response to Interrogatory Number 9.

INTERROGATORY NO. 12:

State all reasons why **YOU** classified as **SPECIALLY PRICED MERCHANDISE** each of the **PRODUCTS** identified in **YOUR** response to Interrogatory Number 9.

INTERROGATORY NO. 13:

Identify, by customer, transaction, **PRODUCT**, invoice number, and price, any and all of **YOUR** customers which, for any of the **PRODUCTS** identified in **YOUR** response to Interrogatory Number 9, **YOU** charged a price that was different than the price which **YOU** charged to **FAMILYMEDS GROUP** for the same **PRODUCT**.

INTERROGATORY NO. 14:

Identify each **PRODUCT** that **FAMILYMEDS GROUP** purchased from **YOU** pursuant to the **SECOND AGREEMENT** and was classified as **NET BILLED**, providing the date of purchase, the price **YOU** charged **FAMILYMEDS GROUP**, the invoice number, the SKU and the NDC.

INTERROGATORY NO. 15:

State the actual price paid by **YOU** for each **PRODUCT** identified in **YOUR** response to Interrogatory Number 14.

INTERROGATORY NO. 16:

Describe in detail how **YOU** calculated the price that **YOU** charged to **FAMILYMEDS GROUP** for each of the **PRODUCTS** identified in **YOUR** response to Interrogatory Number 14.

///

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INTERROGATORY NO. 17:

State all reasons why **YOU** classified as **NET BILLED** each of the **PRODUCTS** identified in **YOUR** response to Interrogatory Number 14.

INTERROGATORY NO. 18:

Identify each **PRODUCT** that **FAMILYMEDS GROUP** purchased from **YOU** pursuant to the **SECOND AGREEMENT** and was designated as **ONESTOP GENERICS**, providing the date of purchase, the price **YOU** charged **FAMILYMEDS GROUP**, the invoice number, the **SKU** and the **NDC**.

INTERROGATORY NO. 19:

State the actual price that **YOU** paid for each **PRODUCT** identified in **YOUR** response to Interrogatory Number 18.

INTERROGATORY NO. 20:

Describe in detail how **YOU** calculated the price that **YOU** charged to **FAMILYMEDS GROUP** for each of the **PRODUCTS** identified in **YOUR** response to Interrogatory Number 18.

INTERROGATORY NO. 21:

Identify any and all credits **YOU** issued to **FAMILYMEDS GROUP** for returned **PRODUCT**, providing the date each credit was issued, the credit memo/invoice number, the amount of each credit, the **SKU** and the **NDC** of each **PRODUCT** involved, and the reasons for the issuance of each credit.

INTERROGATORY NO. 22:

Describe in detail how **YOU** calculated each of the credits identified in **YOUR** response to Interrogatory Number 21.

INTERROGATORY NO. 23:

Describe in detail how you calculated the **AWP** for each and every **PRODUCT** that **FAMILYMEDS GROUP** purchased from **YOU** pursuant to the **SECOND AGREEMENT**, providing the date of purchase, the price **YOU** charged **FAMILYMEDS GROUP**, the invoice number, the **SKU** and the **NDC**.

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1 **INTERROGATORY NO. 24:**

2 Describe in detail, by date and reference number, how YOU calculated all monthly
3 volume discount pricing adjustments under the **SECOND AGREEMENT**.

4 **REQUEST FOR PRODUCTION NO. 25:**

5 Describe in detail, by date and reference number, how YOU calculated all quarterly
6 rebates for generic drug purchases under the **SECOND AGREEMENT**.

7
8 DATED: June 11, 2008

JEFFER, MANGELS, BUTLER & MARMARO LLP
ROBERT C. GEBHARDT
MICHAEL A. GOLD
MATTHEW S. KENEFFICK

9
10
11 By: 

ROBERT C. GEBHARDT

12 Attorneys for Defendant and Counterclaimant
13 FAMILYMEDS GROUP, INC., f/k/a DRUGMAX,
14 INC., a Nevada corporation and Cross-Complainant
15 FAMILYMEDS, INC., a Connecticut corporation
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EXHIBIT 1
TO INTERROGATORIES
REDACTED

PROOF OF SERVICE**STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO**

I am employed in the City and County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is: Two Embarcadero Center, 5th Floor, San Francisco, California 94111.

On June 11, 2008 I served the document(s) described as **FIRST SET OF INTERROGATORIES OF FAMILYMEDS GROUP, INC., F/K/A DRUGMAX, INC., A NEVADA CORPORATION** in this action by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

Maria K. Pum, Esq.
Henderson & Caverly LLP
P.O. Box 9144
16236 San Dieguito Road, Suite 4-13
Rancho-Santa Fe, CA 92067-9144

☐ BY ELECTRONIC SERVICE TRANSMISSION via U.S. District Court, Northern Division, Case Management/Electronic Case Files, Filing System. I served a copy of the above-listed document(s) to the e-mail addresses of the addressee(s) by use as identified and maintained therein.

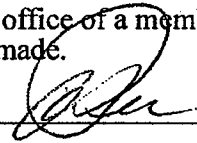
☒ (BY MAIL) I am "readily familiar" with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ (BY FAX) At , I transmitted, pursuant to Rule 2.306, the above-described document by facsimile machine (which complied with Rule 2003(3)), to the above-listed fax number(s). The transmission originated from facsimile phone number (415) 398-5584 and was reported as complete and without error. The facsimile machine properly issued a transmission report, a copy of which is attached hereto.

☐ (BY OVERNIGHT DELIVERY) I caused said envelope(s) to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee(s).

Executed on June 11, 2008 at San Francisco, California.

☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Angela Pereira

JMBM | Jeffer Mangels
Butler & Marmarou

EXHIBIT 5

JEFFER, MANGELS, BUTLER & MARMARO LLP
 ROBERT C. GEBHARDT (Bar No. 48965), rcg@jmbm.com
 MICHAEL A. GOLD (Bar No. 90667), mag@jmbm.com
 MATTHEW S. KENEFICK (Bar No. 227298), msk@jmbm.com
 Two Embarcadero Center, Fifth Floor
 San Francisco, California 94111-3824
 Telephone: (415) 398-8080
 Facsimile: (415) 398-5584

Attorneys for Defendant and Counterclaimant FAMILYMEDS
 GROUP, INC., f/k/a DRUGMAX, INC., a Nevada corporation and
 Cross-Complainant FAMILYMEDS, INC., a Connecticut
 corporation

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

MCKESSON CORPORATION, a Delaware
 corporation,

Plaintiff,

v.

FAMILYMEDS GROUP, INC., f/k/a
 DRUGMAX, INC., a Nevada corporation,

Defendant.

FAMILYMEDS GROUP, INC., f/k/a
 DRUGMAX, INC., a Nevada corporation,

Counterclaimant,

v.

MCKESSON CORPORATION, a Delaware
 corporation,

Counterdefendant.

FAMILYMEDS, INC., a Connecticut
 corporation,

Cross-Complainant,

v.

MCKESSON CORPORATION, a Delaware
 corporation,

Cross-Defendant.

CASE NO. CV07-5715 WDB

**FIRST REQUEST FOR PRODUCTION OF
 DOCUMENTS AND THINGS OF
 FAMILYMEDS GROUP, INC., F/K/A
 DRUGMAX, INC., A NEVADA
 CORPORATION**

Complaint filed: Nov. 9, 2007
 Counterclaim filed: Dec. 17, 2007
 Cross-Complaint Filed: Dec. 17, 2007

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 RECYCLED PAPER

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- 1 -
EXHIBIT 5

CV07-5715 WDB
 REQUEST FOR PRODUCTION, SET ONE

1 **PROPOUNDING PARTY:** Defendant and Counterclaimant Familymeds Group, Inc.,
2 f/k/a DrugMax, Inc., a Nevada corporation
3 ("PROPOUNDING PARTY")

4 **RESPONDING PARTY:** McKesson Corporation, a Delaware corporation
5 ("RESPONDING PARTY")

6 **SET NO.** One (1)

7 Propounding Party requests that Responding Party produce for inspection and/or
8 copying at the San Francisco offices of Jeffer, Mangels, Butler & Marmaro, LLP, located at Two
9 Embarcadero Center, Fifth Floor, San Francisco, CA 94111, within thirty (30) days, in accordance
10 with the requirements and time limits of Federal Rule of Civil Procedure 34.

11 **GENERAL INSTRUCTIONS**

12 A. All documents are to be produced whether in your possession, custody, or control, or
13 the possession, custody, or control of your attorneys, investigators, agents or representatives.

14 B. All documents are to be segregated and referenced to the request(s) to which they
15 respond in accordance with Federal Rule of Civil Procedure 34.

16 C. If any of the requested documents cannot be produced in full, then produce them to
17 the extent possible, and specify the reasons for your inability to produce the remainder, stating
18 whatever information, knowledge or belief you have concerning the unproduced portion.

19 D. If you withhold any document on the basis that it is properly entitled to a limitation
20 on discovery, then produce a list of the documents for which a limitation on discovery is claimed,
21 indicating for each document:

- 22 a. The name of the author, sender and initiator of the document;
- 23 b. The name of the recipient, addressee and party for whom the
- 24 document was intended;
- 25 c. The date of the document or an estimate thereof (so indicated
- 26 as an estimate); and
- 27 d. The general subject matter of the document.

28 E. If your response to any request is that the documents are not in your possession or
29 custody, describe in detail the efforts you made to locate such documents.

30 F. Please produce responsive Electronically Stored Information (as that term is

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1 contemplated in Federal Rule of Civil Procedure 34) in the form(s) in which it is ordinarily
 2 maintained and/or in reasonably usable form(s), preserving all meta-data and native form(s) of the
 3 materials for inspection by Propounding Party.

4 G. These requests for documents are continuing, requiring you to supplement your
 5 response, setting forth any information within the scope of the requests that you may acquire
 6 following your original response.

7 DEFINITIONS

8 1. The term "**DOCUMENTS**," as used herein, means all tangible items within the
 9 scope of Federal Rule of Civil Procedure 34, including without limitation correspondence,
 10 communications, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports,
 11 studies, check statements, receipts, summaries, pamphlets, books, interoffice or intraoffice
 12 communications, telephone message slips, notations, bulletins, drawings, plans, computer printouts,
 13 teletypes, telefaxes, invoices, worksheets, ledger books, books of account and all drafts, alterations,
 14 modifications, changes and amendments of any of the foregoing. These terms include all graphic or
 15 aural records and representations of any kind, including without limitation photographs, charts,
 16 graphs, microfiche, microfilm, videotape recordings, motion pictures and electronic, mechanical or
 17 electrical records or recordation of any kind including without limitation electronic mail
 18 communications, computer disks and diskettes, computer input or output, computer hard drive files,
 19 tapes, cassettes, disks and recordings. These terms include all documents in any language.

20 2. The terms "**YOU**" and "**YOUR**" as used herein mean the **RESPONDING PARTY**
 21 and any person acting on the **RESPONDING PARTY**'s behalf, including, but not limited to,
 22 agents, employees, attorneys, accountants, investigators, partners, representatives and insurance
 23 companies.

24 3. The term "**FAMILYMEDS GROUP**," as used herein, means Familymeds Group,
 25 Inc. a Nevada corporation, f/k/a DrugMax, Inc., a Nevada corporation.

26 4. The term "**SECOND AGREEMENT**," as used herein, means that certain written
 27 Supply Agreement by and between Familymeds Group, Inc. and McKesson Corporation and dated
 28 effective as of December 28, 2006, a copy of which is attached hereto as **Exhibit 1**.

1 5. The terms "PRODUCT," "COST OF GOODS," "SPECIALLY PRICED
2 MERCHANDISE," and "ONESTOP GENERICS," as used herein in the singular and/or plural
3 form, shall each assume the respective meanings ascribed thereto in the **SECOND AGREEMENT**.

4 6. The term "AWP," as used herein, means the McKesson Average Wholesale Price.

5 **FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

6 **REQUEST FOR PRODUCTION NO. 1:**

7 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
8 detailed supporting reports prepared by **YOU**, which memorialize, describe, and/or state the
9 **PRODUCTS** which **FAMILYMEDS GROUP** purchased from **YOU** pursuant to the **SECOND**
10 **AGREEMENT**.

11 **REQUEST FOR PRODUCTION NO. 2:**

12 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
13 detailed supporting reports prepared by **YOU**, which memorialize, describe, and/or state the **COST**
14 **OF GOODS** for any and all **PRODUCTS** that **FAMILYMEDS GROUP** purchased from **YOU**
15 pursuant to the **SECOND AGREEMENT**.

16 **REQUEST FOR PRODUCTION NO. 3:**

17 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
18 detailed supporting reports prepared by **YOU**, which memorialize, describe, and/or state how the
19 **COST OF GOODS** was calculated for any and all **PRODUCTS** that **FAMILYMEDS GROUP**
20 purchased from **YOU** pursuant to the **SECOND AGREEMENT**.

21 **REQUEST FOR PRODUCTION NO. 4:**

22 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
23 detailed supporting reports prepared by **YOU**, which memorialize, describe, and/or state the
24 manufacturer's published acquisition cost for any and all **PRODUCTS** that **FAMILYMEDS**
25 **GROUP** purchased from **YOU** pursuant to the **SECOND AGREEMENT**.

26 **REQUEST FOR PRODUCTION NO. 5:**

27 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
28 detailed supporting reports prepared by **YOU**, which memorialize, describe, and/or state the actual

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1 invoice price paid by **YOU** for any and all **PRODUCTS** that **FAMILYMEDS GROUP** purchased
 2 from **YOU** pursuant to the **SECOND AGREEMENT**.

3 **REQUEST FOR PRODUCTION NO. 6:**

4 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
 5 detailed supporting reports prepared by **YOU**, which memorialize, describe, and/or state the amount
 6 of cash rebates received by **YOU** for any and all **PRODUCTS** that **FAMILYMEDS GROUP**
 7 purchased from **YOU** pursuant to the **SECOND AGREEMENT**.

8 **REQUEST FOR PRODUCTION NO. 7:**

9 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
 10 detailed supporting reports prepared by **YOU**, which memorialize, describe, and/or state the amount
 11 of bonus goods received by **YOU** for any and all **PRODUCTS** that **FAMILYMEDS GROUP**
 12 purchased from **YOU** pursuant to the **SECOND AGREEMENT**.

13 **REQUEST FOR PRODUCTION NO. 8:**

14 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
 15 detailed supporting reports prepared by **YOU**, which memorialize, describe, and/or state the amount
 16 of off-invoice allowances received by **YOU** for any and all **PRODUCTS** that **FAMILYMEDS**
 17 **GROUP** purchased from **YOU** pursuant to the **SECOND AGREEMENT**.

18 **REQUEST FOR PRODUCTION NO. 9:**

19 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
 20 detailed supporting reports prepared by **YOU**, which memorialize, describe, and/or state the amount
 21 of manufacturers' deal prices received by **YOU** for any and all **PRODUCTS** that **FAMILYMEDS**
 22 **GROUP** purchased from **YOU** pursuant to the **SECOND AGREEMENT**.

23 **REQUEST FOR PRODUCTION NO. 10:**

24 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
 25 detailed supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state the
 26 **PRODUCTS** which **FAMILYMEDS GROUP** purchased from **YOU** pursuant to the **SECOND**
 27 **AGREEMENT** and were classified as **SPECIALLY PRICED MERCHANDISE**.

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REQUEST FOR PRODUCTION NO. 11:

Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state the difference between the price charged by **YOU** to **FAMILYMEDS GROUP** and the price charged by **YOU** to any other third-party for **PRODUCTS** classified as **SPECIALLY PRICED MERCHANDISE**.

REQUEST FOR PRODUCTION NO. 12:

Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state the price that **YOU** paid to manufacturers/suppliers for **PRODUCTS** which **FAMILYMEDS GROUP** purchased from **YOU** pursuant to the **SECOND AGREEMENT** and were classified as **SPECIALLY PRICED MERCHANDISE**.

REQUEST FOR PRODUCTION NO. 13:

Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state how **YOU** calculated the price of **PRODUCTS** which **FAMILYMEDS GROUP** purchased from **YOU** pursuant to the **SECOND AGREEMENT** and were classified as **SPECIALLY PRICED MERCHANDISE**.

REQUEST FOR PRODUCTION NO. 14:

Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state the reason(s) why **YOU** classified certain **PRODUCTS** which **FAMILYMEDS GROUP** purchased from **YOU** pursuant to the **SECOND AGREEMENT** as **SPECIALLY PRICED MERCHANDISE**.

REQUEST FOR PRODUCTION NO. 15:

Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state **YOUR** acquisition cost for the **PRODUCTS** that **FAMILYMEDS GROUP** purchased from **YOU**

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1 pursuant to the **SECOND AGREEMENT** and were designated as **ONESTOP GENERICS**.

2 **REQUEST FOR PRODUCTION NO. 16:**

3 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
 4 detailed supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state the
 5 price **YOU** charged **FAMILYMEDS GROUP** for **PRODUCTS** designated as **ONESTOP**
 6 **GENERICS**.

7 **REQUEST FOR PRODUCTION NO. 17:**

8 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
 9 detailed supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state the
 10 amount of credits **YOU** issued to **FAMILYMEDS GROUP** for returned **PRODUCT**.

11 **REQUEST FOR PRODUCTION NO. 18:**

12 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
 13 detailed supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state
 14 how **YOU** calculated the credits **YOU** issued to **FAMILYMEDS GROUP** for returned
 15 **PRODUCT**.

16 **REQUEST FOR PRODUCTION NO. 19:**

17 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
 18 detailed supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state the
 19 **AWP** for any and all **PRODUCTS** that **FAMILYMEDS GROUP** purchased from **YOU** pursuant
 20 to the **SECOND AGREEMENT**.

21 **REQUEST FOR PRODUCTION NO. 20:**

22 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
 23 detailed supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state
 24 how **YOU** calculated the **AWP** for any and all **PRODUCTS** that **FAMILYMEDS GROUP**
 25 purchased from **YOU** pursuant to the **SECOND AGREEMENT**.

26 **REQUEST FOR PRODUCTION NO. 21:**

27 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
 28 detailed supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state the

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1 difference between the AWP and the First Databank published wholesale acquisition cost for any
2 and all **PRODUCTS** that **FAMILYMEDS GROUP** purchased from **YOU** pursuant to the
3 **SECOND AGREEMENT**.

4 **REQUEST FOR PRODUCTION NO. 22:**

5 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
6 detailed supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state any
7 and all **PRODUCTS** which were substituted for **PRODUCTS** that **FAMILYMEDS GROUP**
8 ordered from **YOU** pursuant to the **SECOND AGREEMENT**.

9 **REQUEST FOR PRODUCTION NO. 23:**

10 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
11 detailed supporting reports prepared by **YOU** which indicate, memorialize, reflect, and/or state
12 monthly volume discount pricing adjustments under the **SECOND AGREEMENT**.

13 **REQUEST FOR PRODUCTION NO. 24:**

14 Any and all **DOCUMENTS**, including, without limitation, monthly summary and
15 detailed supporting reports prepared by **YOU** which indicate, memorialize, reflect, and/or state the
16 quarterly rebates given by **YOU** to **FAMILYMEDS GROUP** for generic drug purchases under the
17 **SECOND AGREEMENT**.

18 **REQUEST FOR PRODUCTION NO. 25:**

19 Any and all **DOCUMENTS** identified, referenced, and/or relied upon in **YOUR**
20 response to the First Set of Interrogatories of Familymeds Group, Inc., f/k/a Drugmax, Inc., a
21 Nevada Corporation.

22 ///

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27 ///

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Jeffrey Mangels
Butler & Marmaro LLP

1 DATED: June 11, 2008

JEFFER, MANGELS, BUTLER & MARMARO LLP
ROBERT C. GEBHARDT
MICHAEL A. GOLD
MATTHEW S. KENEFICK

4 By: 

ROBERT C. GEBHARDT

Attorneys for Defendant and Counterclaimant
FAMILYMEDS GROUP, INC., f/k/a DRUGMAX,
INC., a Nevada corporation and Cross-Complainant
FAMILYMEDS, INC., a Connecticut corporation

JMBM Jeffer Mangels
Butler & Marmaro LLP

EXHIBIT 1
TO REQUEST FOR
PRODUCTION
REDACTED

PROOF OF SERVICE**STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO**

I am employed in the City and County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is: Two Embarcadero Center, 5th Floor, San Francisco, California 94111.

On June 11, 2008 I served the document(s) described as **FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS OF FAMILYMEDS GROUP, INC., F/K/A DRUGMAX, INC., A NEVADA CORPORATION** in this action by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

Maria K. Pum, Esq.
Henderson & Caverly LLP
P.O. Box 9144
16236 San Dieguito Road, Suite 4-13
Rancho-Santa Fe, CA 92067-9144

☐ BY ELECTRONIC SERVICE TRANSMISSION via U.S. District Court, Northern Division, Case Management/Electronic Case Files, Filing System. I served a copy of the above-listed document(s) to the e-mail addresses of the addressee(s) by use as identified and maintained therein.

☒ (BY MAIL) I am "readily familiar" with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ (BY FAX) At , I transmitted, pursuant to Rule 2.306, the above-described document by facsimile machine (which complied with Rule 2003(3)), to the above-listed fax number(s). The transmission originated from facsimile phone number (415) 398-5584 and was reported as complete and without error. The facsimile machine properly issued a transmission report, a copy of which is attached hereto.

☐ (BY OVERNIGHT DELIVERY) I caused said envelope(s) to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee(s).

Executed on June 11, 2008 at San Francisco, California.

☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Angela Pereira

JMBM
Jeffrey Mangels
Butler & Marmarou

EXHIBIT 6

MARIA K. PUM (State Bar No. 120987)
KRISTEN E. CAVERLY (State Bar No. 175070)
HENDERSON & CAVERLY LLP
P.O. Box 9144 (all U.S. Mail)
16236 San Dieguito Road, Suite 4-13
Rancho Santa Fe, CA 92067-9144
Telephone: (858) 756-6342
Facsimile: (858) 756-4732
E-mail: mpum@hcesq.com

Attorneys for Plaintiff
McKESSON CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

McKESSON CORPORATION, a Delaware
corporation,

Plaintiff,

v.

FAMILYMEDS GROUP, INC.,
f/k/a Drugmax, Inc., a Nevada corporation,

Defendant.

FAMILYMEDS GROUP, INC.,
f/k/a Drugmax, Inc., a Nevada corporation,

Counterclaimant,

v.

McKESSON CORPORATION, a Delaware
corporation,

Counterdefendant.

FAMILYMEDS, INC.,
a Connecticut corporation,

Cross-Complainant,

v.

McKESSON CORPORATION, a Delaware
corporation,

Cross-Defendant.

Case No. CV07-5715 WDB

**OBJECTIONS AND RESPONSES OF
McKESSON CORPORATION TO
FIRST SET OF INTERROGATORIES
PROPOUNDED BY FAMILYMEDS
GROUP, INC., f/k/a DRUGMAX, INC., A
NEVADA CORPORATION**

Complaint Filed: November 9, 2007
Counterclaim Filed: December 17, 2007
Cross-Complaint Filed: December 17, 2007

Date: [No hearing required.]
Time:
Place:

1 PROPOUNDING PARTY: DEFENDANT AND COUNTERCLAIMANT
2 FAMILYMEDS GROUP, INC. f/k/a DRUGMAX, INC.
3 RESPONDING PARTY: PLAINTIFF McKESSON CORPORATION
4 SET NO.: ONE
5

6 Pursuant to Federal Rules of Civil Procedure, Rule 33, defendant McKESSON
7 CORPORATION ("McKESSON") hereby responds to defendant FAMILYMEDS GROUP's First
8 Set of Interrogatories (the "First Set of Interrogatories"). Terms written in all capital letters and not
9 otherwise defined herein are defined in the First Set of Interrogatories.

10 **GENERAL OBJECTIONS**

11 McKESSON hereby objects to each and every interrogatory set forth in the First Set of
12 Interrogatories on the following grounds. These general objections are applicable to each and
13 every one of the following responses and objections, and failure to repeat an objection in response
14 to a specific interrogatory shall not be deemed a waiver of the objection. Further, if McKESSON
15 specifically repeats one or more of these general objections in response to a specific interrogatory,
16 such specific response cannot be deemed a waiver of any other of these general objections.

17 1. The following responses and objections are provided without prejudice to provide
18 further responses, evidence or information not yet available and/or later discovered.

19 2. McKESSON objects to these interrogatories to the extent that they seek information
20 that is not within McKESSON's possession, custody or control.

21 3. McKESSON objects to these interrogatories to the extent they seek information
22 protected by the attorney-client privilege and/or work product doctrine, or any other applicable
23 privilege.

24 4. McKESSON objects to these interrogatories to the extent they seek information that
25 does not pertain to the allegations made in this lawsuit or information that is not reasonably
26 calculated to lead to the discovery of admissible evidence.

27 5. McKESSON reserves the right to modify, amend or add to its responses and
28 objections.

1 6. McKESSON objects to these interrogatories to the extent they assume facts that do
2 not exist or have not yet been proved, if FAMILYMEDS GROUP bears the burden of proof
3 regarding such facts.

4 7. McKESSON objects to these interrogatories to the extent they seek information that
5 may impair or abrogate the privacy rights of McKESSON and/or other third parties. McKESSON
6 will not provide information containing personal information of an individual without a written
7 waiver by such individual of any privacy rights. For the purposes of these responses, McKESSON
8 includes in "privileged" all information protected from discovery by any individual's rights of
9 privacy, until and unless such individual has executed a written waiver of such rights.

10 8. McKESSON objects to these interrogatories to the extent they require McKESSON to
11 provide information already in the possession of the requesting party, equally available to the
12 requesting party, information in the public domain and/or information from sources other than
13 McKESSON. McKESSON will not provide information already known to be in the possession of
14 the requesting party, equally available to the requesting party, information in the public domain
15 and/or information from sources other than McKESSON, including but not limited to court filings
16 and documents recorded in official local, state or federal records.

17 9. McKESSON objects to these interrogatories on the grounds that they are overbroad in
18 time and/or scope, oppressive, vague, ambiguous, harassing and unduly burdensome.

19 10. McKESSON objects to these interrogatories because they request McKESSON to
20 disclose trade secrets and confidential and proprietary information which are not relevant to nor
21 reasonably calculated to lead to the discovery of admissible evidence and/or for which McKesson's
22 competitive advantage derived from such information remaining confidential is not outweighed by
23 the requesting party's need for such information.

24 11. McKESSON makes these responses solely for the purpose of and in relation to this
25 action. McKESSON's responses to these interrogatories are made subject to any and all objections
26 that would require the exclusion of any statement contained herein if the interrogatories were asked
27 of, or any statement contained herein was made by, a witness present and testifying in court. All
28 such objections and grounds therefore are reserved and may be interposed at the time of trial.

1 McKESSON's responses to these interrogatories are not intended as admissions and/or denials of
2 any statements or purported contentions contained therein.

3 DEFINITIONS

4 The term "OPEN INVOICES" refers to invoices sent by McKESSON to FAMILYMEDS
5 GROUP in the course of performance of the SECOND AGREEMENT, which were not fully paid
6 by FAMILYMEDS GROUP and which had invoice dates of February 26, 2007, March 31, 2007,
7 September 11, 2007, September 12, 2007, September 13, 2007, September 14, 2007 and/or
8 September 17, 2007.

9 RESPONSES TO INTERROGATORIES

10 INTERROGATORY NO. 1

11 State the COST OF GOODS for any and all PRODUCTS that FAMILYMEDS GROUP
12 purchased from YOU pursuant to the SECOND AGREEMENT, identifying each PRODUCT, the
13 date of purchase, the invoice number, the SKU and the NDC.

14 RESPONSE TO INTERROGATORY NO. 1

15 In addition to the general objections set forth above, which are incorporated herein by this
16 reference, McKESSON objects to INTERROGATORY NO. 1 as being overly broad and
17 burdensome. McKesson objects to this Request as calling for the disclosure of trade secret and
18 confidential information. McKesson objects to this Request as calling for the disclosure of
19 attorney-client privileged and attorney work product privileged materials. McKESSON further
20 objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear
21 to be reasonably calculated to lead to the discovery of admissible evidence and, therefore,
22 INTERROGATORY NO. 1 is outside the scope of permissible discovery as set forth in Rule
23 26(b)(1). Subject to the foregoing objections and without waiver of any of the General Objections
24 set forth above, McKESSON will respond to this INTERROGATORY through the production of
25 business records pursuant to Rule 33(d), namely copies of the OPEN INVOICES and data related
26 to the items reflected on such invoices (Bates Nos. 1-482).

27

28

1 **INTERROGATORY NO. 2**

2 For each PRODUCT identified in YOUR responses to Interrogatory Number 1, explain
3 how YOU calculated the COST OF GOODS.

4 **RESPONSE TO INTERROGATORY NO. 2**

5 In addition to the general objections set forth above, which are incorporated herein by this
6 reference, McKESSON objects to INTERROGATORY NO. 2 as being overly broad and
7 burdensome. McKesson objects to this Request as calling for the disclosure of trade secret and
8 confidential information. McKesson objects to this Request as calling for the disclosure of
9 attorney-client privileged and attorney work product privileged materials. McKESSON further
10 objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear
11 to be reasonably calculated to lead to the discovery of admissible evidence and, therefore,
12 INTERROGATORY NO. 2 is outside the scope of permissible discovery as set forth in Rule
13 26(b)(1). McKESSON also objects to this INTERROGATORY because it requests confidential
14 information that is a trade secret and proprietary to McKESSON. Subject to the foregoing
15 objections, and without waiver of any of the General Objections set forth above, McKESSON
16 responds that it calculated the COST OF GOODS for each PRODUCT identified in the OPEN
17 INVOICES in accordance with the methodology set forth in Section 5 of the SECOND
18 AGREEMENT. Furthermore, the COST OF GOODS pricing was calculated based on "COST" as
19 defined in the SECOND AGREEMENT where (for PRODUCTS other than contract-priced
20 PRODUCTS or specially priced merchandise or generic PRODUCTS) "COST" was determined by
21 reference to the "manufacturer's published acquisition cost."

22 **INTERROGATORY NO. 3**

23 For each PRODUCT identified in YOUR response to Interrogatory Number 1, state the
24 manufacturer's published acquisition cost as of the date of each purchase identified in said
25 response.

26 **RESPONSE TO INTERROGATORY NO. 3**

27 In addition to the general objections set forth above, which are incorporated herein by this
28 reference, McKESSON objects to INTERROGATORY NO. 3 as being overly broad and

1 burdensome. McKesson objects to this Request as calling for the disclosure of trade secret and
2 confidential information. McKesson objects to this Request as calling for the disclosure of
3 attorney-client privileged and attorney work product privileged materials. McKESSON further
4 objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear
5 to be reasonably calculated to lead to the discovery of admissible evidence and, therefore,
6 INTERROGATORY NO. 3 is outside the scope of permissible discovery as set forth in Rule
7 26(b)(1). McKESSON also objects to this INTERROGATORY because it requests confidential
8 information that is a trade secret and proprietary to McKESSON. Subject to the foregoing
9 objections and without waiver of any of the General Objections set forth above, McKESSON
10 responds to this INTERROGATORY through the production of business records pursuant to Rule
11 33(d), namely Bates Nos. 483-566 setting forth "WAC."

12 **INTERROGATORY NO. 4**

13 For each PRODUCT identified in YOUR response to Interrogatory Number 1, state the
14 actual price paid by YOU.

15 **RESPONSE TO INTERROGATORY NO. 4**

16 In addition to the general objections set forth above, which are incorporated herein by this
17 reference, McKESSON objects to INTERROGATORY NO. 4 as being overly broad and
18 burdensome. McKesson objects to this Request as calling for the disclosure of trade secret and
19 confidential information. McKesson objects to this Request as calling for the disclosure of
20 attorney-client privileged and attorney work product privileged materials. McKESSON further
21 objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear
22 to be reasonably calculated to lead to the discovery of admissible evidence and, therefore,
23 INTERROGATORY NO. 4 is outside the scope of permissible discovery as set forth in Rule
24 26(b)(1). Because the actual price paid by McKESSON for PRODUCT sold to FAMILYMEDS
25 GROUP has no bearing on the calculation of the price or COST OF GOODS that was paid or
26 agreed to be paid by FAMILYMEDS GROUP for PRODUCT or Merchandise purchased from
27 McKESSON pursuant to the SECOND AGREEMENT, the actual price paid by McKESSON will
28 not be provided in these Responses to the First Set of Interrogatories. Furthermore, McKESSON

1 objects to INTERROGATORY NO. 4 because it seeks confidential information that is a trade
2 secret and proprietary to McKESSON.

3 **INTERROGATORY NO. 5**

4 For each PRODUCT identified in YOUR response to Interrogatory Number 1, state the
5 amount of cash rebates YOU received.

6 **RESPONSE TO INTERROGATORY NO. 5**

7 In addition to the general objections set forth above, which are incorporated herein by this
8 reference, McKESSON objects to INTERROGATORY NO. 5 as being overly broad and
9 burdensome. McKesson objects to this Request as calling for the disclosure of trade secret and
10 confidential information. McKesson objects to this Request as calling for the disclosure of
11 attorney-client privileged and attorney work product privileged materials. McKESSON further
12 objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear
13 to be reasonably calculated to lead to the discovery of admissible evidence and, therefore,
14 INTERROGATORY NO. 5 is outside the scope of permissible discovery as set forth in Rule
15 26(b)(1). Nothing in the SECOND AGREEMENT ties the COST OF GOODS payable by
16 FAMILYMEDS GROUP for PRODUCT purchased from McKESSON to the cash rebates that
17 McKESSON may have received from vendors before reselling that PRODUCT to FAMILYMEDS
18 GROUP. In fact, the SECOND AGREEMENT states that:

19
20 For the avoidance of doubt, nothing herein will entitle Customer to receive or share
21 in any fees, discounts, rebates or other consideration received by McKesson from a
22 vendor or its affiliates for any services rendered by McKesson or any other action or
23 forbearance by McKesson, including without limitation any fees discounts, rebates
or other consideration received by McKesson pursuant to a core distribution
agreement, inventory management agreement or any other similar agreement with
the vendor or its affiliates

24 In other words, cash rebates received by McKESSON have no bearing on the obligations of
25 McKESSON to FAMILYMEDS GROUP pursuant to the SECOND AGREEMENT and therefore
26 data on cash rebates received by McKESSON will not be provided in these Responses to the First
27 Set of Interrogatories. Furthermore, McKESSON objects to INTERROGATORY NO. 5 because it
28 seeks confidential information that is a trade secret and proprietary to McKESSON.

INTERROGATORY NO. 6

For each PRODUCT identified in YOUR response to Interrogatory Number 1, state the amount of bonus goods YOU received.

RESPONSE TO INTERROGATORY NO. 6

In addition to the general objections set forth above, which are incorporated herein by this reference, McKesson objects to INTERROGATORY NO. 6 as being overly broad and burdensome. McKesson objects to this Request as calling for the disclosure of trade secret and confidential information. McKesson objects to this Request as calling for the disclosure of attorney-client privileged and attorney work product privileged materials. McKesson further objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear to be reasonably calculated to lead to the discovery of admissible evidence and, therefore, INTERROGATORY NO. 6 is outside the scope of permissible discovery as set forth in Rule 26(b)(1). Nothing in the SECOND AGREEMENT ties the COST OF GOODS payable by FAMILYMEDS GROUP for PRODUCT purchased from McKesson to the amount of bonus goods that McKesson may have received from vendors before reselling that PRODUCT to FAMILYMEDS GROUP. In fact, the SECOND AGREEMENT states that:

For the avoidance of doubt, nothing herein will entitle Customer to receive or share in any fees, discounts, rebates or other consideration received by McKesson from a vendor or its affiliates for any services rendered by McKesson or any other action or forbearance by McKesson, including without limitation any fees discounts, rebates or other consideration received by McKesson pursuant to a core distribution agreement, inventory management agreement or any other similar agreement with the vendor or its affiliates

In other words, the amount of bonus goods received by McKesson has no bearing on the obligations of McKesson to FAMILYMEDS GROUP pursuant to the SECOND AGREEMENT and therefore data on the amount of bonus goods received by McKesson will not be provided in these Responses to the First Set of Interrogatories. Furthermore, McKesson objects to INTERROGATORY NO. 6 because it seeks confidential information that is a trade secret and proprietary to McKesson.

1 **INTERROGATORY NO. 7**

2 For each PRODUCT identified in YOUR response to Interrogatory Number 1, state the
3 amount of off-invoice allowances YOU received.

4 **RESPONSE TO INTERROGATORY NO. 7**

5 In addition to the general objections set forth above, which are incorporated herein by this
6 reference, McKESSON objects to INTERROGATORY NO. 7 as being overly broad and
7 burdensome. McKesson objects to this Request as calling for the disclosure of trade secret and
8 confidential information. McKesson objects to this Request as calling for the disclosure of
9 attorney-client privileged and attorney work product privileged materials. McKESSON further
10 objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear
11 to be reasonably calculated to lead to the discovery of admissible evidence and, therefore,
12 INTERROGATORY NO. 7 is outside the scope of permissible discovery as set forth in Rule
13 26(b)(1). Nothing in the SECOND AGREEMENT ties the COST OF GOODS payable by
14 FAMILYMEDS GROUP for PRODUCT purchased from McKESSON to the amount of off-
15 invoice allowances that McKESSON may have received from vendors before reselling that
16 PRODUCT to FAMILYMEDS GROUP. In fact, the SECOND AGREEMENT states that:

17 For the avoidance of doubt, nothing herein will entitle Customer to receive or share
18 in any fees, discounts, rebates or other consideration received by McKesson from a
19 vendor or its affiliates for any services rendered by McKesson or any other action or
20 forbearance by McKesson, including without limitation any fees discounts, rebates
21 or other consideration received by McKesson pursuant to a core distribution
agreement, inventory management agreement or any other similar agreement with
the vendor or its affiliates

22 In other words, the amount of off-invoice allowances received by McKESSON has no bearing on
23 the obligations of McKESSON to FAMILYMEDS GROUP pursuant to the SECOND
24 AGREEMENT and therefore data on the amount of off-invoice allowances received by
25 McKESSON will not be provided in these Responses to the First Set of Interrogatories.
26 Furthermore, McKESSON objects to INTERROGATORY NO. 7 because it seeks confidential
27 information that is a trade secret and proprietary to McKESSON.

28

1 **INTERROGATORY NO. 8**

2 For each PRODUCT identified in YOUR response to Interrogatory Number 1, identify any
3 and all manufacturers' deal prices YOU received.

4 **RESPONSE TO INTERROGATORY NO. 8**

5 In addition to the general objections set forth above, which are incorporated herein by this
6 reference, McKESSON objects to INTERROGATORY NO. 8 as being overly broad and
7 burdensome. McKesson objects to this Request as calling for the disclosure of trade secret and
8 confidential information. McKesson objects to this Request as calling for the disclosure of
9 attorney-client privileged and attorney work product privileged materials. McKESSON further
10 objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear
11 to be reasonably calculated to lead to the discovery of admissible evidence and, therefore,
12 INTERROGATORY NO. 8 is outside the scope of permissible discovery as set forth in Rule
13 26(b)(1). Nothing in the SECOND AGREEMENT ties the COST OF GOODS payable by
14 FAMILYMEDS GROUP for PRODUCT purchased from McKESSON to the amount of
15 manufacturers' deal prices that McKESSON may have received from vendors before reselling that
16 PRODUCT to FAMILYMEDS GROUP. In fact, the SECOND AGREEMENT states that:

17 For the avoidance of doubt, nothing herein will entitle Customer to receive or share
18 in any fees, discounts, rebates or other consideration received by McKesson from a
19 vendor or its affiliates for any services rendered by McKesson or any other action or
20 forbearance by McKesson, including without limitation any fees discounts, rebates
21 or other consideration received by McKesson pursuant to a core distribution
22 agreement, inventory management agreement or any other similar agreement with
23 the vendor or its affiliates

24 In other words, the amount of manufacturers' deal prices received by McKESSON has no bearing
25 on the obligations of McKESSON to FAMILYMEDS GROUP pursuant to the SECOND
26 AGREEMENT and therefore data on the amount of manufacturers' deal prices received by
27 McKESSON will not be provided in these Responses to the First Set of Interrogatories.
28 Furthermore, McKESSON objects to INTERROGATORY NO. 8 because it seeks confidential
information that is a trade secret and proprietary to McKESSON.

1 **INTERROGATORY NO. 9**

2 Identify each PRODUCT that FAMILYMEDS GROUP purchased from YOU pursuant to
3 the SECOND AGREEMENT and was classified as SPECIALLY PRICED MERCHANDISE,
4 providing the date of purchase, the invoice number, the price YOU charged FAMILYMEDS
5 GROUP, the SKU, and the NDC.

6 **RESPONSE TO INTERROGATORY NO. 9**

7 In addition to the general objections set forth above, which are incorporated herein by this
8 reference, McKESSON objects to INTERROGATORY NO. 9 as being overly broad and
9 burdensome and ambiguous. McKesson objects to this Request as calling for the disclosure of
10 trade secret and confidential information. McKesson objects to this Request as calling for the
11 disclosure of attorney-client privileged and attorney work product privileged materials.
12 McKESSON further objects that the scope of this INTERROGATORY seeks irrelevant
13 information that does not appear to be reasonably calculated to lead to the discovery of admissible
14 evidence and, therefore, INTERROGATORY NO. 9 is outside the scope of permissible discovery
15 as set forth in Rule 26(b)(1). McKESSON also objects to this INTERROGATORY because it
16 requests confidential information that is a trade secret and proprietary to McKESSON. Subject to
17 the foregoing objections and without waiver of the General Objections set forth above,
18 McKESSON responds to this INTERROGATORY through the production of business records
19 pursuant to Rule 33(d), namely Bates Nos. 483-566.

20 **INTERROGATORY NO. 10**

21 State the actual price paid by YOU for each PRODUCT identified in YOUR response to
22 Interrogatory Number 9.

23 **RESPONSE TO INTERROGATORY NO. 10**

24 In addition to the general objections set forth above, which are incorporated herein by this
25 reference, McKESSON objects to INTERROGATORY NO. 10 as being overly broad and
26 burdensome. McKesson objects to this Request as calling for the disclosure of trade secret and
27 confidential information. McKesson objects to this Request as calling for the disclosure of
28 attorney-client privileged and attorney work product privileged materials. McKESSON further

1 objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear
2 to be reasonably calculated to lead to the discovery of admissible evidence and, therefore,
3 INTERROGATORY NO. 10 is outside the scope of permissible discovery as set forth in Rule
4 26(b)(1). Because the actual price paid by McKESSON for PRODUCT sold to FAMILYMEDS
5 GROUP has no bearing on the calculation of the price that was paid or agreed to be paid by
6 FAMILYMEDS GROUP for PRODUCT or Merchandise purchased from McKESSON pursuant to
7 the SECOND AGREEMENT, the actual price paid by McKESSON will not be provided in these
8 Responses to the First Set of Interrogatories. Furthermore, McKESSON objects to
9 INTERROGATORY NO. 10 because it seeks confidential information that is a trade secret and
10 proprietary to McKESSON.

11 **INTERROGATORY NO. 11**

12 Describe in detail how YOU calculated the price that YOU charged to FAMILYMEDS
13 GROUP for each PRODUCT identified in YOUR response to Interrogatory Number 9.

14 **RESPONSE TO INTERROGATORY NO 11**

15 In addition to the general objections set forth above, which are incorporated herein by this
16 reference, McKESSON objects to INTERROGATORY NO. 11 as being overly broad and
17 burdensome. McKesson objects to this Request as calling for the disclosure of trade secret and
18 confidential information. McKesson objects to this Request as calling for the disclosure of
19 attorney-client privileged and attorney work product privileged materials. McKESSON further
20 objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear
21 to be reasonably calculated to lead to the discovery of admissible evidence and, therefore,
22 INTERROGATORY NO. 11 is outside the scope of permissible discovery as set forth in Rule
23 26(b)(1). McKESSON also objects to this INTERROGATORY because it requests confidential
24 information that is a trade secret and proprietary to McKESSON. Subject to the foregoing
25 objections and without waiver of the General Objections set forth above, McKESSON states that
26 SPECIALLY PRICED MERCHANDISE was billed "in accordance with the terms and conditions
27 established by McKesson (including applicable markup) for such Merchandise."
28

INTERROGATORY NO. 12

State all reasons why YOU classified as SPECIALLY PRICED MERCHANDISE each of the PRODUCTS identified in YOUR response to Interrogatory Number 9.

RESPONSE TO INTERROGATORY NO 12

In addition to the general objections set forth above, which are incorporated herein by this reference, McKESSON objects to INTERROGATORY NO. 12 as being overly broad and burdensome. McKesson objects to this Request as calling for the disclosure of trade secret and confidential information. McKesson objects to this Request as calling for the disclosure of attorney-client privileged and attorney work product privileged materials. McKESSON further objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear to be reasonably calculated to lead to the discovery of admissible evidence and, therefore, INTERROGATORY NO. 12 is outside the scope of permissible discovery as set forth in Rule 26(b)(1). McKESSON also objects to this INTERROGATORY because it requests confidential information that is a trade secret and proprietary to McKESSON. Subject to the foregoing objections and without waiver of the General Objections set forth above, McKESSON states that SPECIALLY PRICED MERCHANDISE was merchandise selected by McKesson and included, without limitation, multi-source generic pharmaceuticals, repackaged pharmaceuticals, private label products, HBC/OTC products, medical surgical supplies, home healthcare/durable medical equipment, certain antibiotics, merchandise acquired by McKESSON from vendors not offering customary cash discounts or other terms, and other specially, slow moving, non-pharmaceutical, and/or net-billed Merchandise. Those specific items categorized as SPECIALLY PRICED MERCHANDISE on the OPEN INVOICES may be seen in the accompanying document production as permitted by Rule 33(d).

INTERROGATORY NO. 13

Identify, by customer, transaction, PRODUCT, invoice number, and price, any and all of YOUR customers which, for any of the PRODUCTS identified in YOUR response to Interrogatory Number 9, YOU charged a price that was different than the price which YOU charged to FAMILYMEDS GROUP for the same PRODUCT.

1 **RESPONSE TO INTERROGATORY NO 13**

2 In addition to the general objections set forth above, which are incorporated herein by this
3 reference, McKESSON objects to INTERROGATORY NO. 13 as being overly broad and
4 burdensome. McKesson objects to this Request as calling for the disclosure of trade secret and
5 confidential information. McKesson objects to this Request as calling for the disclosure of
6 attorney-client privileged and attorney work product privileged materials. McKESSON further
7 objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear
8 to be reasonably calculated to lead to the discovery of admissible evidence and, therefore,
9 INTERROGATORY NO. 13 is outside the scope of permissible discovery as set forth in Rule
10 26(b)(1). McKESSON also objects to this INTERROGATORY because it requests confidential
11 information that is a trade secret and proprietary to McKESSON. McKESSON further objects to
12 this INTERROGATORY because it requests information on the identity of other customers of
13 McKESSON, and the contract terms that McKESSON gave such other customers, all of which is
14 confidential information and a trade secret.

15 **INTERROGATORY NO. 14**

16 Identify each PRODUCT that FAMILYMEDS GROUP purchased from YOU pursuant to
17 the SECOND AGREEMENT and was classified as NET BILLED, providing the date of purchase,
18 the price YOU charged FAMILYMEDS GROUP, the invoice number, the SKU and the NDC.

19 **RESPONSE TO INTERROGATORY NO 14**

20 In addition to the general objections set forth above, which are incorporated herein by this
21 reference, McKESSON objects to INTERROGATORY NO. 14 as being overly broad and
22 burdensome. McKesson objects to this Request as calling for the disclosure of trade secret and
23 confidential information. McKesson objects to this Request as calling for the disclosure of
24 attorney-client privileged and attorney work product privileged materials. McKESSON further
25 objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear
26 to be reasonably calculated to lead to the discovery of admissible evidence and, therefore,
27 INTERROGATORY NO. 14 is outside the scope of permissible discovery as set forth in Rule
28 26(b)(1). McKESSON also objects to this INTERROGATORY because it requests confidential

1 information that is a trade secret and proprietary to McKESSON. Subject to the foregoing
2 objections and without waiver of the General Objections set forth above, McKESSON responds to
3 this INTERROGATORY through the production of business records pursuant to Rule 33(d),
4 namely by providing the OPEN INVOICES and data related thereto, Bates Nos. 483-566.

5 **INTERROGATORY NO. 15**

6 State the actual price paid by YOU for each PRODUCT identified in YOUR response to
7 Interrogatory Number 14.

8 **RESPONSE TO INTERROGATORY NO. 15**

9 In addition to the general objections set forth above, which are incorporated herein by this reference,
10 McKESSON objects to INTERROGATORY NO. 15 as being overly broad and burdensome. McKesson
11 objects to this Request as calling for the disclosure of trade secret and confidential information. McKesson
12 objects to this Request as calling for the disclosure of attorney-client privileged and attorney work product
13 privileged materials. McKESSON further objects that the scope of this INTERROGATORY seeks
14 irrelevant information that does not appear to be reasonably calculated to lead to the discovery of admissible
15 evidence and, therefore, INTERROGATORY NO. 15 is outside the scope of permissible discovery as set
16 forth in Rule 26(b)(1). Because the actual price paid by McKESSON for PRODUCT sold to
17 FAMILYMEDS GROUP has no bearing on the calculation of the price that was paid or agreed to be paid by
18 FAMILYMEDS GROUP for PRODUCT or Merchandise purchased from McKESSON pursuant to the
19 SECOND AGREEMENT, the actual price paid by McKESSON will not be provided in these Responses to
20 the First Set of Interrogatories. Furthermore, McKESSON objects to INTERROGATORY NO. 15 because
21 it seeks confidential information that is a trade secret and proprietary to McKESSON.

22 **INTERROGATORY NO. 16**

23 Describe in detail how YOU calculated the price that YOU charged to FAMILYMEDS GROUP for
24 each of the PRODUCTS identified in YOUR response to Interrogatory Number 14.

25 **RESPONSE TO INTERROGATORY NO 16**

26 In addition to the general objections set forth above, which are incorporated herein by this reference,
27 McKESSON objects to INTERROGATORY NO. 16 as being overly broad and burdensome. McKesson
28 objects to this Request as calling for the disclosure of trade secret and confidential information. McKesson
objects to this Request as calling for the disclosure of attorney-client privileged and attorney work product
privileged materials. McKESSON further objects that the scope of this INTERROGATORY seeks

1 irrelevant information that does not appear to be reasonably calculated to lead to the discovery of admissible
 2 evidence and, therefore, INTERROGATORY NO. 16 is outside the scope of permissible discovery as set
 3 forth in Rule 26(b)(1). McKESSON also objects to this INTERROGATORY because it requests
 4 confidential information that is a trade secret and proprietary to McKESSON. Subject to the foregoing
 5 objections and without waiver of the General Objections set forth above, McKESSON states that each NET
 6 BILLED item (all of which are SPECIALLY PRICED MERCHANDISE) was priced in conformance with
 7 the SECOND AGREEMENT in that NET BILLED items were not priced based upon the cost-plus pricing
 8 method applicable to Merchandise sold based on the COST OF GOODS defined in the SECOND
 9 AGREEMENT. Instead, NET BILLED items were billed "in accordance with the terms and conditions
 established by McKesson (including applicable markup) for such Merchandise."

10 **INTERROGATORY NO. 17**

11 State all reasons why YOU classified as NET BILLED each of the PRODUCTS identified in
 12 YOUR response to interrogatory Number 14.

13 **RESPONSE TO INTERROGATORY NO 17**

14 In addition to the general objections set forth above, which are incorporated herein by this reference,
 15 McKESSON objects to INTERROGATORY NO. 17 as being overly broad and burdensome. McKesson
 16 objects to this Request as calling for the disclosure of trade secret and confidential information. McKesson
 17 objects to this Request as calling for the disclosure of attorney-client privileged and attorney work product
 18 privileged materials. McKESSON further objects that the scope of this INTERROGATORY seeks
 19 irrelevant information that does not appear to be reasonably calculated to lead to the discovery of admissible
 20 evidence and, therefore, INTERROGATORY NO. 17 is outside the scope of permissible discovery as set
 21 forth in Rule 26(b)(1). McKESSON also objects to this INTERROGATORY because it requests
 22 confidential information that is a trade secret and proprietary to McKESSON. Without waiving any of the
 23 foregoing objections, nor any of the General Objections set forth above, McKESSON states that NET
 24 BILLED ITEMS are the same as SPECIALLY PRICED MERCHANDISE and the same methodology used
 25 to classify PRODUCTS as SPECIALLY PRICED MERCHANDISE was used to classify NET BILLED
 items.

26 **INTERROGATORY NO. 18**

27 Identify each PRODUCT that FAMILYMEDS GROUP purchased from YOU pursuant to the
 28 SECOND AGREEMENT and was designated as ONESTOP GENERICS, providing the date of purchase,
 the price YOU charged FAMILYMEDS GROUP, the invoice number, the SKU and the NDC.

RESPONSE TO INTERROGATORY NO 18

In addition to the general objections set forth above, which are incorporated herein by this reference, McKESSON objects to INTERROGATORY NO. 18 as being overly broad and burdensome. McKesson objects to this Request as calling for the disclosure of trade secret and confidential information. McKesson objects to this Request as calling for the disclosure of attorney-client privileged and attorney work product privileged materials. McKESSON further objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear to be reasonably calculated to lead to the discovery of admissible evidence and, therefore, INTERROGATORY NO. 18 is outside the scope of permissible discovery as set forth in Rule 26(b)(1). McKESSON also objects to this INTERROGATORY because it requests confidential information that is a trade secret and proprietary to McKESSON. Without waiving any of the foregoing objections, nor any of the General Objections set forth above, McKESSON responds to this INTERROGATORY through the production of business records pursuant to Rule 33(d) by the production and delivery to FAMILYMEDS GROUP of compact disks containing spreadsheets compiled from the business records of McKESSON.

INTERROGATORY NO. 19

State the actual price YOU paid for each PRODUCT identified in YOUR response to Interrogatory Number 18.

RESPONSE TO INTERROGATORY NO 19

In addition to the general objections set forth above, which are incorporated herein by this reference, McKESSON objects to INTERROGATORY NO. 19 as being overly broad and burdensome. McKesson objects to this Request as calling for the disclosure of trade secret and confidential information. McKesson objects to this Request as calling for the disclosure of attorney-client privileged and attorney work product privileged materials. McKESSON further objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear to be reasonably calculated to lead to the discovery of admissible evidence and, therefore, INTERROGATORY NO. 15 is outside the scope of permissible discovery as set forth in Rule 26(b)(1). Because the actual price paid by McKESSON for PRODUCT sold to FAMILYMEDS GROUP has no bearing on the calculation of the price that was paid or agreed to be paid by FAMILYMEDS GROUP for PRODUCT or Merchandise purchased from McKESSON pursuant to the SECOND AGREEMENT, the actual price paid by McKESSON will not be provided in these Responses to the First Set of Interrogatories. Furthermore, McKESSON objects to INTERROGATORY NO. 19 because it seeks confidential information that is a trade secret and proprietary to McKESSON.

INTERROGATORY NO. 20

Describe in detail how YOU calculated the price that YOU charged to FAMILYMEDS GROUP for each of the PRODUCTS identified in YOUR response to Interrogatory Number 18.

RESPONSE TO INTERROGATORY NO 20

In addition to the general objections set forth above, which are incorporated herein by this reference, McKESSON objects to INTERROGATORY NO. 20 as being overly broad and burdensome. McKesson objects to this Request as calling for the disclosure of trade secret and confidential information. McKesson objects to this Request as calling for the disclosure of attorney-client privileged and attorney work product privileged materials. McKESSON further objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear to be reasonably calculated to lead to the discovery of admissible evidence and, therefore, INTERROGATORY NO. 20 is outside the scope of permissible discovery as set forth in Rule 26(b)(1). McKESSON also objects to this INTERROGATORY because it requests confidential information that is a trade secret and proprietary to McKESSON. Subject to the foregoing objections and without waiver of the General Objections set forth above, McKESSON states that the ONESTOP GENERICS program is a proprietary program established by McKesson which is an optional generic pharmaceutical purchasing program for retail pharmacies. Under the ONESTOP GENERICS program, McKesson enters into contracts with retail pharmacies to supply generic drugs at a price lower than the pharmacy would otherwise pay because the retail pharmacy gets some advantage of McKesson's superior buying and negotiating power. The formulas and methodology used by McKesson to calculate a particular retail pharmacy's purchase price are trade secret and proprietary to McKesson and on that basis McKesson refuses to provide such information as it relates to the Propounding Party and any other third parties.

INTERROGATORY NO. 21

Identify any and all credits YOU issued to FAMILYMEDS GROUP for returned PRODUCT, providing the date each credit was issued, the credit memo/invoice number, the amount of each credit, the SKU and the NDC of each PRODUCT involved, and the reasons for the issuance of the credit.

RESPONSE TO INTERROGATORY NO 21

In addition to the general objections set forth above, which are incorporated herein by this reference, McKESSON objects to INTERROGATORY NO. 21 as being overly broad and burdensome. McKESSON objects to this INTERROGATORY as the requested information is already in the possession of the Propounding Party. McKesson objects to this Request as calling for the disclosure of trade secret and

confidential information. McKesson objects to this Request as calling for the disclosure of attorney-client privileged and attorney work product privileged materials. McKESSON further objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear to be reasonably calculated to lead to the discovery of admissible evidence and, therefore, INTERROGATORY NO. 21 is outside the scope of permissible discovery as set forth in Rule 26(b)(1). Subject to the foregoing objections and without waiver of the General Objections set forth above, McKESSON responds to this INTERROGATORY through the production of business records pursuant to Rule 33(d), namely copies of the OPEN INVOICES which reflect the credits given for returned products. Further, the reason for the issuance of each credit for returned product was that the applicable PRODUCT was returned.

INTERROGATORY NO. 22

Describe in detail how YOU calculated each of the credits identified in YOUR response to Interrogatory Number 21.

RESPONSE TO INTERROGATORY NO 22

In addition to the general objections set forth above, which are incorporated herein by this reference, McKESSON objects to INTERROGATORY NO. 20 as being overly broad and burdensome. McKesson objects to this Request as calling for the disclosure of trade secret and confidential information. McKesson objects to this Request as calling for the disclosure of attorney-client privileged and attorney work product privileged materials. McKESSON further objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear to be reasonably calculated to lead to the discovery of admissible evidence and, therefore, INTERROGATORY NO. 20 is outside the scope of permissible discovery as set forth in Rule 26(b)(1). Subject to the foregoing objections and without waiver of the General Objections set forth above, McKESSON states that credits for returned product were calculated in conformance with the SECOND AGREEMENT, including Section 6 thereof.

INTERROGATORY NO. 23

Describe in detail how you calculated the AWP for each and every PRODUCT that FAMILYMEDS GROUP purchased from YOU pursuant to the SECOND AGREEMENT, providing the date of purchase, the price YOU charged FAMILYMEDS GROUP, the invoice number, the SKU and the NDC.

RESPONSE TO INTERROGATORY NO 23

In addition to the general objections set forth above, which are incorporated herein by this reference, McKESSON objects to INTERROGATORY NO. 21 as being overly broad, burdensome and unintelligible. McKesson objects to this Request as calling for the disclosure of trade secret and confidential information. McKesson objects to this Request as calling for the disclosure of attorney-client privileged and attorney work product privileged materials. McKESSON further objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear to be reasonably calculated to lead to the discovery of admissible evidence and, therefore, INTERROGATORY NO. 21 is outside the scope of permissible discovery as set forth in Rule 26(b)(1). Subject to the foregoing objections and without waiver of the General Objections set forth above, McKESSON states that there is no such thing as "AWP" which the First Set of Interrogatories defines as "McKesson Average Wholesale Price," and therefore there is no information responsive to this INTERROGATORY.

INTERROGATORY NO. 24

Describe in detail, by date and reference number, how YOU calculated all monthly volume discount pricing adjustments under the SECOND AGREEMENT.

RESPONSE TO INTERROGATORY NO 24

In addition to the general objections set forth above, which are incorporated herein by this reference, McKESSON objects to INTERROGATORY NO. 24 as being overly broad and burdensome and vague and ambiguous. McKesson objects to this Request as calling for the disclosure of trade secret and confidential information. McKesson objects to this Request as calling for the disclosure of attorney-client privileged and attorney work product privileged materials. McKESSON further objects that the scope of this INTERROGATORY seeks irrelevant information that does not appear to be reasonably calculated to lead to the discovery of admissible evidence and, therefore, INTERROGATORY NO. 24 is outside the scope of permissible discovery as set forth in Rule 26(b)(1). McKESSON also objects to this INTERROGATORY because it requests confidential information that is a trade secret and proprietary to McKESSON. Subject to the foregoing objections and without waiver of the General Objections set forth above, McKESSON responds to this INTERROGATORY by stating that monthly volume discount pricing adjustments were to be calculated as provided in the SECOND AGREEMENT, including Section 5.C thereof. However, in each month between December 2006 and November 2007, inclusive, McKESSON gave FAMILYMEDS GROUP the discounts applicable to a Chainwide Monthly Average Volume (net of returns, allowances, rebates and all credits and adjustments issued and exclusive of drop shipped purchases) of \$13,108,000 to

1 \$14,418,999 even though the only month that FAMILYMEDS GROUP qualified for that discount was in
 2 February, 2007. In each other month, the discount given to FAMILYMEDS GROUP was greater than what
 3 FAMILYMEDS GROUP earned based on the volume of goods it purchased. McKESSON cannot provide a
 4 "reference number" as requested in INTERROGATORY NO. 24 because McKESSON is unaware of what
 5 that "reference number" might be.

6 **INTERROGATORY NO. 25**

7 Describe in detail, by date and reference number, how YOU calculated all quarterly rebates
 8 for generic drug purchases under the **SECOND AGREEMENT**.

9 **RESPONSE TO INTERROGATORY NO 25**

10 In addition to the general objections set forth above, which are incorporated herein by this
 11 reference, McKESSON objects to INTERROGATORY NO. 25 as being overly broad and
 12 burdensome and vague and ambiguous. McKesson objects to this Request as calling for the
 13 disclosure of trade secret and confidential information. McKesson objects to this Request as
 14 calling for the disclosure of attorney-client privileged and attorney work product privileged
 15 materials. McKESSON further objects that the scope of this INTERROGATORY seeks irrelevant
 16 information that does not appear to be reasonably calculated to lead to the discovery of admissible
 17 evidence and, therefore, INTERROGATORY NO. 25 is outside the scope of permissible discovery
 18 as set forth in Rule 26(b)(1). McKESSON also objects to this INTERROGATORY because it
 19 requests confidential information that is a trade secret and proprietary to McKESSON. Subject to
 20 the foregoing objections and without waiver of the General Objections set forth above,
 21 McKESSON responds to this INTERROGATORY through the production of business records
 22 pursuant to Rule 33(d), Bates Nos. 642-645. McKESSON cannot provide a "reference number" as
 23 requested in INTERROGATORY NO. 25 because McKESSON is unaware of what that "reference
 24 number" might be.

25 DATED: July 14, 2008

HENDERSON & CAVERLY LLP

26 By: 

27 Maria K. Purn
 28 Attorneys for Plaintiff McKESSON
 CORPORATION

VERIFICATION OF PERSON ANSWERING INTERROGATORIES

I, LESLIE MORGAN, declare under penalty of perjury under the laws of the United States that that I am a Vice President of McKesson Corporation with custody and control of the books and records of McKesson Corporation and that the answers to the foregoing First Set of Interrogatories are true and correct to the best of my knowledge, information and belief after reviewing such books and records, all of which are kept in the ordinary course of business of

McKesson Corporation.

HENDERSON CAVERLY

Executed as of this ____ day of July at Norman, Oklahoma.

VERIFICATION OF PERSON ANSWERING INTERROGATORIES

I, LESLIE MORGAN, declare under penalty of perjury under the laws of the United States that that I am a Vice President of McKesson Corporation with custody and control of the books and records of McKesson Corporation and that the answers to the foregoing First Set of Interrogatories are true and correct to the best of my knowledge, information and belief after reviewing such books and records, all of which are kept in the ordinary course of business of

McKesson Corporation.

Executed as of this 14 day of July at Norman, Oklahoma.


LESLIE MORGAN

PROOF OF SERVICE

I am employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is Henderson & Caverly LLP, P.O. Box 9144, 16236 San Dieguito Road, Suite 4-13, Rancho Santa Fe, California 92067.

On July 14, 2008, I served the attached:

**OBJECTIONS AND RESPONSES TO FIRST SET OF INTERROGATORIES OF
FAMILYMEDS GROUP, INC., F/K/A DRUGMAX, INC., A NEVADA
CORPORATION**

on the parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

Robert C. Gebhardt, Esq.
Jeffer, Mangels, Butler & Marmaro LLP
Two Embarcadero Center, Fifth Floor
San Francisco, California 94111-3824

XX (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Henderson & Caverly LLP, Rancho Santa Fe, California, following ordinary business practices. I am familiar with the practice of Henderson & Caverly LLP for collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Rancho Santa Fe, California on July 14, 2008.


QUYNH NGUYEN

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Attorneys for Plaintiff
McKESSON CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

McKESSON CORPORATION, a Delaware
corporation,

Plaintiff,

v.

FAMILYMEDS GROUP, INC.,
f/k/a Drugmax, Inc., a Connecticut corporation,

Defendant.

FAMILYMEDS GROUP, INC.,
f/k/a Drugmax, Inc., a Connecticut corporation,

Counterclaimant,

v.

McKESSON CORPORATION, a Delaware
corporation,

Counterdefendant.

FAMILYMEDS, INC.,
a Connecticut corporation,

Cross-Complainant,

v.

McKESSON CORPORATION, a Delaware
corporation,

Cross-Defendant.

Case No. CV07-5715 WDB

**OBJECTIONS AND RESPONSES OF
McKESSON CORPORATION TO THE
FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS AND THINGS OF
FAMILYMEDS GROUP, INC., f/k/a
DRUGMAX, INC., A NEVADA
CORPORATION**

Complaint Filed: November 9, 2007
Counterclaim Filed: December 17, 2007
Cross-Complaint Filed: December 17, 2007

1 PROPOUNDING PARTY: DEFENDANT AND COUNTERCLAIMANT
2 FAMILYMEDS GROUP, INC. f/k/a DRUGMAX, INC.
3 RESPONDING PARTY: PLAINTIFF McKESSON CORPORATION
4 SET NO.: ONE

5 Pursuant to Federal Rules of Civil Procedure, Rule 34, plaintiff McKesson Corporation
6 ("McKESSON") hereby responds to the "First Request for Production of Documents and Things"
7 (the "Document Request") propounded by defendant FAMILYMEDS GROUP, INC., f/k/a
8 DRUGMAX, INC. ("FAMILYMEDS GROUP").

9 **GENERAL OBJECTIONS**

10 Initially, McKESSON objects to the inclusion of an un-redacted copy of the Supply
11 Agreement dated as of February 2, 2007 and executed by McKESSON and FAMILYMEDS
12 GROUP (the "SECOND AGREEMENT"), as either an exhibit to the Document Request or in
13 response to any demand made in the Document Request because the disclosure of that agreement
14 to any third party and/or the possible filing of that document with the Court would violate its
15 confidentiality terms and disclose trade secrets of McKESSON.

16 McKESSON also hereby objects to each and every request for production of documents,
17 each a "REQUEST", on the grounds set forth below. These general objections are applicable to
18 each and every one of the following responses and objections, and failure to repeat an objection in
19 response to a specific REQUEST shall not be deemed a waiver of the objection. Further, if
20 McKESSON specifically repeats one or more of these general objections in response to a specific
21 REQUEST, such specific response cannot be deemed a waiver of any other of these general
22 objections.

23 1. The following responses and objections are provided without prejudice to provide
24 further documents, evidence or information not yet available and/or later discovered.

25 2. McKESSON objects to these demands to the extent that they seek documents that are
26 not within McKESSON's possession, custody or control. McKESSON will produce only
27 responsive, non-privileged documents within its possession, custody or control. To the extent
28

1 McKESSON is aware of responsive documents which existed but have been lost or destroyed,
2 McKESSON will identify such documents to plaintiff to the extent practicable.

3 3. McKESSON objects to these demands to the extent they seek documents and/or
4 information that reflect confidential communications between McKESSON and its attorneys or
5 other parties that are protected by the attorney-client privilege. McKESSON further objects to
6 these demands to the extent that they call for the work product, legal conclusions, opinions,
7 impressions, theories of McKESSON, McKESSON's attorneys and/or representatives that are
8 protected under the work product doctrine. McKESSON will not produce attorney-client
9 privileged documents and/or attorney work product.

10 4. McKESSON objects to these demands to the extent they seek information and
11 documents that do not pertain to the allegations made in this lawsuit or are not reasonably
12 calculated to lead to the discovery of admissible evidence.

13 5. McKESSON reserves the right to modify, amend or add to its responses and
14 objections. McKESSON further reserves all objections regarding the admissibility of any
15 produced documents, including but not limited to objections as to relevancy and authenticity.

16 6. McKESSON objects to these demands to the extent they assume facts that do not
17 exist or have not yet been proved, if FAMILYMEDS GROUP bears the burden of proof regarding
18 such facts.

19 7. McKESSON objects to these demands to the extent they seek information that may
20 impair or abrogate the privacy rights of McKESSON and/or other third parties. McKESSON will
21 not produce documents containing personal information of an individual without a written waiver
22 by such individual of any privacy rights. For the purposes of these responses, McKESSON
23 includes in "privileged" all documents protected from discovery by any individual's rights of
24 privacy, until and unless such individual has executed a written waiver of such rights.

25 8. McKESSON objects to these demands to the extent they require McKESSON to
26 produce documents already in the possession of the Requesting party, equally available to the
27 Requesting party, documents in the public domain and/or documents from sources other than
28 McKESSON. McKESSON will not produce documents already known to be in the possession of

1 the Requesting party, equally available to the Requesting party, documents in the public domain
 2 and/or documents from sources other than McKESSON, including but not limited to court filings
 3 and documents recorded in official local, state or federal records.

4 9. McKESSON objects to these demands on the grounds that they are overbroad in time
 5 and/or scope, oppressive, vague, ambiguous, harassing and unduly burdensome.

6 10. Any statement herein to the effect that "McKESSON will produce all responsive,
 7 non-privileged documents" is not a representation, and should not be construed to mean, that any
 8 such documents exist.

9 11. McKESSON objects to the oppressive and burdensome scope of the document
 10 requests and will therefore only produce documents as requested that relate to the OPEN
 11 INVOICES defined below.

12 12. McKESSON objects to the REQUESTS because they request information that is a
 13 trade secret or that is proprietary and/or confidential information of McKESSON.

14 13. McKESSON makes these responses solely for the purpose of and in relation to this
 15 action. McKESSON's responses to these demands are made subject to any and all objections that
 16 would require the exclusion of any statement contained herein if the demands were asked of, or any
 17 statement contained herein was made by, a witness present and testifying in court. All such
 18 objections and grounds therefore are reserved and may be interposed at the time of trial.
 19 McKESSON's responses to these demands are not intended as admissions and/or denials of any
 20 statements or purported contentions contained therein.

21 DEFINITIONS

22 Words set forth in all capital letters have the meanings they were assigned to have in the
 23 Document Request unless such capitalized words are otherwise defined herein. The term "OPEN
 24 INVOICES" refers to invoices sent by McKESSON to FAMILYMEDS GROUP, in the course of
 25 McKESSON'S performance of the SECOND AGREEMENT, which were not fully paid by
 26 FAMILYMEDS GROUP and which had invoice dates of February 26, 2007, March 31, 2007,
 27 September 11, 2007, September 12, 2007, September 13, 2007, September 14, 2007 and/or
 28 September 17, 2007.

1 **RESPONSES TO REQUEST FOR PRODUCTION**

2 **REQUEST FOR PRODUCTION NO. 1.**

3 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
4 supporting reports prepared by **YOU**, which memorialize, describe, and/or state the **PRODUCTS**
5 which **FAMILYMEDS GROUP** purchased from **YOU** pursuant to the **SECOND**
6 **AGREEMENT**.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1.**

8 In addition to the general objections set forth above, which are incorporated herein by this
9 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 1 as being overly broad
10 and burdensome. All non-privileged documents responsive to this REQUEST are already in
11 possession of FAMILYMEDS GROUP. McKESSON further objects that the scope of this
12 REQUEST seeks irrelevant information that does not appear to be reasonably calculated to lead to
13 the discovery of admissible evidence and, therefore, REQUEST FOR PRODUCTION NO. 1 is
14 outside the scope of permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this
15 REQUEST as calling for the production of trade secret and confidential information. McKesson
16 objects to this REQUEST as calling for the production of attorney-client privileged and attorney
17 work product privileged materials. Subject to the foregoing objections and without waiver of the
18 General Objections set forth above, McKESSON will produce copies of the OPEN INVOICES,
19 related data and FAMILYMEDS GROUP'S most recent summary statement for the month ending
20 June 30, 2008.

21 **REQUEST FOR PRODUCTION NO. 2.**

22 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
23 supporting reports prepared by **YOU**, which memorialize, describe, and/or state the **COST OF**
24 **GOODS** for any and all **PRODUCTS** that **FAMILYMEDS GROUP** purchased from **YOU**
25 pursuant to the **SECOND AGREEMENT**.

26
27
28

RESPONSE TO REQUEST FOR PRODUCTION NO. 2.

In addition to the general objections set forth above, which are incorporated herein by this reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 2 as being overly broad and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant information that does not appear to be reasonably calculated to lead to the discovery of admissible evidence and, therefore, REQUEST FOR PRODUCTION NO. 2 is outside the scope of permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling for the production of trade secret and confidential information. McKesson objects to this REQUEST as calling for the production of attorney-client privileged and attorney work product privileged materials. Subject to the foregoing objections and without waiver of the General Objections set forth above, McKESSON will produce copies of the OPEN INVOICES, related data and FAMILYMEDS GROUP'S most recent summary statement for the month ending June 30, 2008.

REQUEST FOR PRODUCTION NO. 3.

Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed supporting reports prepared by **YOU**, which memorialize, describe, and/or state how the **COST OF GOODS** was calculated for any and all **PRODUCTS** that **FAMILYMEDS GROUP** purchased from **YOU** pursuant to the **SECOND AGREEMENT**.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3.

In addition to the general objections set forth above, which are incorporated herein by this reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 3 as being overly broad and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant information that does not appear to be reasonably calculated to lead to the discovery of admissible evidence and, therefore, REQUEST FOR PRODUCTION NO. 3 is outside the scope of permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling for the production of trade secret and confidential information. McKesson objects to this REQUEST as calling for the production of attorney-client privileged and attorney work product privileged materials. The methodology for calculating the **COST OF GOODS** is fully and

1 exclusively set forth in the SECOND AGREEMENT, a copy of which is already in the possession
2 of FAMILYMEDS GROUP and so will not be produced to FAMILYMEDS GROUP.

3 McKESSON will not be producing DOCUMENTS pursuant to this REQUEST.

4 **REQUEST FOR PRODUCTION NO. 4.**

5 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
6 supporting reports prepared by **YOU**, which memorialize, describe, and/or state the manufacturer's
7 published acquisition cost for any and all **PRODUCTS** that **FAMILYMEDS GROUP** purchased
8 from **YOU** pursuant to the **SECOND AGREEMENT**.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4.**

10 In addition to the general objections set forth above, which are incorporated herein by this
11 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 4 as being overly broad
12 and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant
13 information that does not appear to be reasonably calculated to lead to the discovery of admissible
14 evidence and, therefore, REQUEST FOR PRODUCTION NO. 4 is outside the scope of
15 permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling
16 for the production of trade secret and confidential information. McKesson objects to this
17 REQUEST as calling for the production of attorney-client privileged and attorney work product
18 privileged materials. Subject to the foregoing objections and without waiver of the General
19 Objections set forth above, McKESSON will produce copies of the OPEN INVOICES, related data
20 and FAMILYMEDS GROUP'S most recent summary statement for the month ending June 30,
21 2008.

22 **REQUEST FOR PRODUCTION NO. 5.**

23 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
24 supporting reports prepared by **YOU**, which memorialize, describe, and/or state the actual invoice
25 paid by **YOU** for any and all **PRODUCTS** that **FAMILYMEDS GROUP** purchased from **YOU**
26 pursuant to the **SECOND AGREEMENT**.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5.

In addition to the general objections set forth above, which are incorporated herein by this reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 5 as being overly broad and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant information that does not appear to be reasonably calculated to lead to the discovery of admissible evidence and, therefore, REQUEST FOR PRODUCTION NO. 5 is outside the scope of permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling for the production of trade secret and confidential information. McKesson objects to this REQUEST as calling for the production of attorney-client privileged and attorney work product privileged materials. The REQUEST is also unintelligible; McKESSON did not pay invoices for PRODUCTS purchased by FAMILYMEDS.

REQUEST FOR PRODUCTION NO. 6.

Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed supporting reports prepared by **YOU**, which memorialize, describe, and/or state the amount of cash rebates received by **YOU** for any and all **PRODUCTS** that **FAMILYMEDS GROUP** purchased from **YOU** pursuant to the **SECOND AGREEMENT**.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6.

In addition to the general objections set forth above, which are incorporated herein by this reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 6 as being overly broad and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant information that does not appear to be reasonably calculated to lead to the discovery of admissible evidence and, therefore, REQUEST FOR PRODUCTION NO. 6 is outside the scope of permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling for the production of trade secret and confidential information. McKesson objects to this REQUEST as calling for the production of attorney-client privileged and attorney work product privileged materials. McKESSON will not be producing **DOCUMENTS** pursuant to this REQUEST.

REQUEST FOR PRODUCTION NO. 7.

Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed supporting reports prepared by **YOU**, which memorialize, describe, and/or state the amount of bonus goods received by **YOU** for any and all **PRODUCTS** that **FAMILYMEDS GROUP** purchased from **YOU** pursuant to the **SECOND AGREEMENT**.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7.

In addition to the general objections set forth above, which are incorporated herein by this reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 7 as being overly broad and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant information that does not appear to be reasonably calculated to lead to the discovery of admissible evidence and, therefore, REQUEST FOR PRODUCTION NO. 7 is outside the scope of permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling for the production of trade secret and confidential information. McKesson objects to this REQUEST as calling for the production of attorney-client privileged and attorney work product privileged materials. McKESSON will not be producing DOCUMENTS pursuant to this REQUEST.

REQUEST FOR PRODUCTION NO. 8.

Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed supporting reports prepared by **YOU**, which memorialize, describe, and/or state the amount of off-invoice allowances received by **YOU** for any and all **PRODUCTS** that **FAMILYMEDS GROUP** purchased from **YOU** pursuant to the **SECOND AGREEMENT**.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8.

In addition to the general objections set forth above, which are incorporated herein by this reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 8 as being overly broad and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant information that does not appear to be reasonably calculated to lead to the discovery of admissible evidence and, therefore, REQUEST FOR PRODUCTION NO. 8 is outside the scope of permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling

1 for the production of trade secret and confidential information. McKesson objects to this
2 REQUEST as calling for the production of attorney-client privileged and attorney work product
3 privileged materials. McKESSON will not be producing DOCUMENTS pursuant to this
4 REQUEST.

5 **REQUEST FOR PRODUCTION NO. 9.**

6 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
7 supporting reports prepared by **YOU**, which memorialize, describe, and/or state the amount of
8 manufacturers' deal prices received by **YOU** for any and all **PRODUCTS** that **FAMILYMEDS**
9 **GROUP** purchased from **YOU** pursuant to the **SECOND AGREEMENT**.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9.**

11 In addition to the general objections set forth above, which are incorporated herein by this
12 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 9 as being overly broad
13 and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant
14 information that does not appear to be reasonably calculated to lead to the discovery of admissible
15 evidence and, therefore, REQUEST FOR PRODUCTION NO. 9 is outside the scope of
16 permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling
17 for the production of trade secret and confidential information. McKesson objects to this
18 REQUEST as calling for the production of attorney-client privileged and attorney work product
19 privileged materials. McKESSON will not be producing DOCUMENTS pursuant to this
20 REQUEST.

21 **REQUEST FOR PRODUCTION NO. 10.**

22 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
23 supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state the
24 **PRODUCTS** which **FAMILYMEDS GROUP** purchased from **YOU** pursuant to the **SECOND**
25 **AGREEMENT** and were classified as **SPECIALLY PRICED MERCHANDISE**.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10.**

27 In addition to the general objections set forth above, which are incorporated herein by this
28 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 10 as being overly broad

1 and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant
2 information that does not appear to be reasonably calculated to lead to the discovery of admissible
3 evidence and, therefore, REQUEST FOR PRODUCTION NO. 10 is outside the scope of
4 permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling
5 for the production of trade secret and confidential information. McKesson objects to this
6 REQUEST as calling for the production of attorney-client privileged and attorney work product
7 privileged materials. Subject to the foregoing objections and without waiver of the General
8 Objections set forth above, McKESSON will produce copies of the OPEN INVOICES, related data
9 and FAMILYMEDS GROUP'S most recent summary statement for the month ending June 30,
10 2008.

11 **REQUEST FOR PRODUCTION NO. 11.**

12 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
13 supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state the
14 difference between the price charged by **YOU** to **FAMILYMEDS GROUP** and the price charged
15 by **YOU** to other third-party for **PRODUCTS** classified as **SPECIALLY PRICED**
16 **MERCHANDISE**.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11.**

18 In addition to the general objections set forth above, which are incorporated herein by this
19 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 11 as being overly broad
20 and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant
21 information that does not appear to be reasonably calculated to lead to the discovery of admissible
22 evidence and, therefore, REQUEST FOR PRODUCTION NO. 11 is outside the scope of
23 permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling
24 for the production of trade secret and confidential information. McKesson objects to this
25 REQUEST as calling for the production of attorney-client privileged and attorney work product
26 privileged materials. McKESSON will not be producing **DOCUMENTS** in response to this
27 REQUEST.
28

1 **REQUEST FOR PRODUCTION NO. 12.**

2 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
 3 supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state the price
 4 that **YOU** paid to manufacturers/suppliers for **PRODUCTS** which **FAMILYMEDS GROUP**
 5 purchased from **YOU** pursuant to the **SECOND AGREEMENT** and were classified as
 6 **SPECIALLY PRICED MERCHANDISE.**

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12.**

8 In addition to the general objections set forth above, which are incorporated herein by this
 9 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 12 as being overly broad
 10 and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant
 11 information that does not appear to be reasonably calculated to lead to the discovery of admissible
 12 evidence and, therefore, REQUEST FOR PRODUCTION NO. 12 is outside the scope of
 13 permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling
 14 for the production of trade secret and confidential information. McKesson objects to this
 15 REQUEST as calling for the production of attorney-client privileged and attorney work product
 16 privileged materials. McKESSON will not be producing DOCUMENTS in response to this
 17 REQUEST.

18 **REQUEST FOR PRODUCTION NO. 13.**

19 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
 20 supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state how **YOU**
 21 calculated the price of **PRODUCTS** which **FAMILYMEDS GROUP** purchased from **YOU**
 22 pursuant to the **SECOND AGREEMENT** and were classified as **SPECIALLY PRICED**
 23 **MERCHANDISE.**

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13.**

25 In addition to the general objections set forth above, which are incorporated herein by this
 26 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 13 as being overly broad
 27 and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant
 28 information that does not appear to be reasonably calculated to lead to the discovery of admissible

1 evidence and, therefore, REQUEST FOR PRODUCTION NO. 13 is outside the scope of
2 permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling
3 for the production of trade secret and confidential information. McKesson objects to this
4 REQUEST as calling for the production of attorney-client privileged and attorney work product
5 privileged materials. The methodology for calculating the price of SPECIALLY PRICED
6 MERCHANDISE is set forth in the SECOND AGREEMENT. Said agreement is already in the
7 possession of FAMILYMEDS GROUP and will not be produced in response to this REQUEST.

8 **REQUEST FOR PRODUCTION NO. 14.**

9 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
10 supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state the
11 reason(s) why **YOU** classified certain **PRODUCTS** which **FAMILYMEDS GROUP** purchased
12 from **YOU** pursuant to the **SECOND AGREEMENT** and were classified as **SPECIALLY**
13 **PRICED MERCHANDISE**.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14.**

15 In addition to the general objections set forth above, which are incorporated herein by this
16 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 14 as being overly broad
17 and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant
18 information that does not appear to be reasonably calculated to lead to the discovery of admissible
19 evidence and, therefore, REQUEST FOR PRODUCTION NO. 14 is outside the scope of
20 permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling
21 for the production of trade secret and confidential information. McKesson objects to this
22 REQUEST as calling for the production of attorney-client privileged and attorney work product
23 privileged materials. The methodology for classifying **PRODUCTS** as **SPECIALLY PRICED**
24 **MERCHANDISE** is set forth in the **SECOND AGREEMENT**. Said agreement is already in the
25 possession of **FAMILYMEDS GROUP** and will not be produced in response to this REQUEST.

26 **REQUEST FOR PRODUCTION NO. 15.**

27 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
28 supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state **YOUR**

1 acquisition cost for the **PRODUCTS** which **FAMILYMEDS GROUP** purchased from **YOU**
2 pursuant to the **SECOND AGREEMENT** and were classified as **ONESTOP GENERICS**.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15.**

4 In addition to the general objections set forth above, which are incorporated herein by this
5 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 15 as being overly broad
6 and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant
7 information that does not appear to be reasonably calculated to lead to the discovery of admissible
8 evidence and, therefore, REQUEST FOR PRODUCTION NO. 15 is outside the scope of
9 permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling
10 for the production of trade secret and confidential information. McKesson objects to this
11 REQUEST as calling for the production of attorney-client privileged and attorney work product
12 privileged materials. McKESSON will not be producing DOCUMENTS in response to this
13 REQUEST.

14 **REQUEST FOR PRODUCTION NO. 16.**

15 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
16 supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state the price
17 **YOU** charged **FAMILYMEDS GROUP** for **PRODUCTS** designated as **ONESTOP**
18 **GENERICS**.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16.**

20 In addition to the general objections set forth above, which are incorporated herein by this
21 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 16 as being overly broad
22 and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant
23 information that does not appear to be reasonably calculated to lead to the discovery of admissible
24 evidence and, therefore, REQUEST FOR PRODUCTION NO. 16 is outside the scope of
25 permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling
26 for the production of trade secret and confidential information. McKesson objects to this
27 REQUEST as calling for the production of attorney-client privileged and attorney work product
28 privileged materials. Subject to the foregoing objections and without waiver of the General

1 Objections set forth above, McKESSON will produce copies of the OPEN INVOICES, related data
 2 and FAMILYMEDS GROUP'S most recent summary statement for the month ending June 30,
 3 2008.

4 **REQUEST FOR PRODUCTION NO. 17.**

5 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
 6 supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state the amount
 7 of credits **YOU** issued to **FAMILYMEDS GROUP** for returned **PRODUCT**.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17.**

9 In addition to the general objections set forth above, which are incorporated herein by this
 10 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 17 as being overly broad
 11 and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant
 12 information that does not appear to be reasonably calculated to lead to the discovery of admissible
 13 evidence and, therefore, REQUEST FOR PRODUCTION NO. 17 is outside the scope of
 14 permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling
 15 for the production of trade secret and confidential information. McKesson objects to this
 16 REQUEST as calling for the production of attorney-client privileged and attorney work product
 17 privileged materials. Subject to the foregoing objections and without waiver of the General
 18 Objections set forth above, McKESSON will produce copies of the OPEN INVOICES, related data
 19 and FAMILYMEDS GROUP'S most recent summary statement for the month ending June 30,
 20 2008.

21 **REQUEST FOR PRODUCTION NO. 18.**

22 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
 23 supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state how **YOU**
 24 calculated the credits **YOU** issued to **FAMILYMEDS GROUP** for returned **PRODUCT**.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18.**

26 In addition to the general objections set forth above, which are incorporated herein by this
 27 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 18 as being overly broad
 28 and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant

1 information that does not appear to be reasonably calculated to lead to the discovery of admissible
2 evidence and, therefore, REQUEST FOR PRODUCTION NO. 18 is outside the scope of
3 permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling
4 for the production of trade secret and confidential information. McKesson objects to this
5 REQUEST as calling for the production of attorney-client privileged and attorney work product
6 privileged materials. Subject to the foregoing objections and without waiver of the General
7 Objections set forth above, McKESSON will produce copies of the OPEN INVOICES, related data
8 and FAMILYMEDS GROUP'S most recent summary statement for the month ending June 30,
9 2008.

10 **REQUEST FOR PRODUCTION NO. 19.**

11 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
12 supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state the **AWP**
13 for any and all **PRODUCTS** that **FAMILYMEDS GROUP** purchased from **YOU** pursuant to the
14 **SECOND AGREEMENT**.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19.**

16 In addition to the general objections set forth above, which are incorporated herein by this
17 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 19 as being overly broad
18 and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant
19 information that does not appear to be reasonably calculated to lead to the discovery of admissible
20 evidence and, therefore, REQUEST FOR PRODUCTION NO. 19 is outside the scope of
21 permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling
22 for the production of trade secret and confidential information. McKesson objects to this
23 REQUEST as calling for the production of attorney-client privileged and attorney work product
24 privileged materials. Subject to the foregoing objections and without waiver of the General
25 Objections set forth above, there are no **DOCUMENTS** responsive to this REQUEST.

26 **REQUEST FOR PRODUCTION NO. 20.**

27 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
28 supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state how **YOU**

1 calculated the AWP for any and all **PRODUCTS** that **FAMILYMEDS GROUP** purchased from
2 **YOU** pursuant to the **SECOND AGREEMENT**.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20.**

4 In addition to the general objections set forth above, which are incorporated herein by this
5 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 20 as being overly broad
6 and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant
7 information that does not appear to be reasonably calculated to lead to the discovery of admissible
8 evidence and, therefore, REQUEST FOR PRODUCTION NO. 20 is outside the scope of
9 permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling
10 for the production of trade secret and confidential information. McKesson objects to this
11 REQUEST as calling for the production of attorney-client privileged and attorney work product
12 privileged materials. Subject to the foregoing objections and without waiver of the General
13 Objections set forth above, there are no DOCUMENTS responsive to this REQUEST.

14 **REQUEST FOR PRODUCTION NO. 21.**

15 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
16 supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state the
17 difference between the AWP and the First Databank published wholesale acquisition cost for any
18 and all **PRODUCTS** that **FAMILYMEDS GROUP** purchased from **YOU** pursuant to the
19 **SECOND AGREEMENT**.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21.**

21 In addition to the general objections set forth above, which are incorporated herein by this
22 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 21 as being overly broad
23 and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant
24 information that does not appear to be reasonably calculated to lead to the discovery of admissible
25 evidence and, therefore, REQUEST FOR PRODUCTION NO. 21 is outside the scope of
26 permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling
27 for the production of trade secret and confidential information. McKesson objects to this
28 REQUEST as calling for the production of attorney-client privileged and attorney work product

1 privileged materials. Subject to the foregoing objections and without waiver of the General
2 Objections set forth above, there are no DOCUMENTS responsive to this REQUEST.

3 **REQUEST FOR PRODUCTION NO. 22.**

4 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
5 supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state any and all
6 **PRODUCTS** which were substituted for **PRODUCTS** that **FAMILYMEDS GROUP** ordered
7 from **YOU** pursuant to the **SECOND AGREEMENT**.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22.**

9 In addition to the general objections set forth above, which are incorporated herein by this
10 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 22 as being overly broad
11 and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant
12 information that does not appear to be reasonably calculated to lead to the discovery of admissible
13 evidence and, therefore, REQUEST FOR PRODUCTION NO. 22 is outside the scope of
14 permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling
15 for the production of trade secret and confidential information. McKesson objects to this
16 REQUEST as calling for the production of attorney-client privileged and attorney work product
17 privileged materials. McKESSON will not be producing DOCUMENTS in response to this
18 REQUEST.

19 **REQUEST FOR PRODUCTION NO. 23.**

20 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
21 supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state monthly
22 volume discount pricing adjustments under the **SECOND AGREEMENT**.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23.**

24 In addition to the general objections set forth above, which are incorporated herein by this
25 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 23 as being overly broad
26 and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant
27 information that does not appear to be reasonably calculated to lead to the discovery of admissible
28 evidence and, therefore, REQUEST FOR PRODUCTION NO. 23 is outside the scope of

1 permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling
2 for the production of trade secret and confidential information. McKesson objects to this
3 REQUEST as calling for the production of attorney-client privileged and attorney work product
4 privileged materials. Subject to the foregoing objections and without waiver of the General
5 Objections set forth above, McKESSON will produce copies of the OPEN INVOICES, related data
6 and FAMILYMEDS GROUP'S most recent summary statement for the month ending June 30,
7 2008.

8 **REQUEST FOR PRODUCTION NO. 24.**

9 Any and all **DOCUMENTS**, including, without limitation, monthly summary and detailed
10 supporting reports prepared by **YOU**, which indicate, memorialize, reflect, and/or state the
11 quarterly rebates given by **YOU** to **FAMILYMEDS GROUP** for generic drug purchases under the
12 **SECOND AGREEMENT**.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24.**

14 In addition to the general objections set forth above, which are incorporated herein by this
15 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 24 as being overly broad
16 and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant
17 information that does not appear to be reasonably calculated to lead to the discovery of admissible
18 evidence and, therefore, REQUEST FOR PRODUCTION NO. 24 is outside the scope of
19 permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling
20 for the production of trade secret and confidential information. McKesson objects to this
21 REQUEST as calling for the production of attorney-client privileged and attorney work product
22 privileged materials. Subject to the foregoing objections and without waiver of the General
23 Objections set forth above, McKESSON will produce copies of the OPEN INVOICES, related data
24 and FAMILYMEDS GROUP'S most recent summary statement for the month ending June 30,
25 2008.

26 **REQUEST FOR PRODUCTION NO. 25.**

27 Any and all **DOCUMENTS**, identified, referenced, and/or relied upon in **YOUR** response
28 to the First Set of Interrogatories of FAMILYMEDS GROUP, f/k/a Drugmax, Inc., a Nevada

1 Corporation.

2 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25.**

3 In addition to the general objections set forth above, which are incorporated herein by this
 4 reference, McKESSON objects to REQUEST FOR PRODUCTION NO. 25 as being overly broad
 5 and burdensome. McKESSON further objects that the scope of this REQUEST seeks irrelevant
 6 information that does not appear to be reasonably calculated to lead to the discovery of admissible
 7 evidence and, therefore, REQUEST FOR PRODUCTION NO. 25 is outside the scope of
 8 permissible discovery as set forth in Rule 26(b)(1). McKesson objects to this REQUEST as calling
 9 for the production of trade secret and confidential information. McKesson objects to this
 10 REQUEST as calling for the production of attorney-client privileged and attorney work product
 11 privileged materials. Subject to the foregoing objections and without waiver of the General
 12 Objections set forth above, McKESSON will produce copies of the OPEN INVOICES, related data
 13 and FAMILYMEDS GROUP'S most recent summary statement for the month ending June 30,
 14 2008.

15
 16 DATED: July 14, 2008

HENDERSON & CAVERLY LLP

17
 18 By:

Maria K. Purn
 Attorneys for Plaintiff McKESSON
 CORPORATION

PROOF OF SERVICE

I am employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is Henderson & Caverly LLP, P.O. Box 9144, 16236 San Dieguito Road, Suite 4-13, Rancho Santa Fe, California 92067.

On July 14, 2008, I served the attached:

OBJECTIONS AND RESPONSES TO THE FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS OF FAMILYMEDS GROUP, f/k/a DRUGMAX, INC., A NEVADA CORPORATION

on the parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

Robert C. Gebhardt, Esq.
Jeffer, Mangels, Butler & Marmaro LLP
Two Embarcadero Center, Fifth Floor
San Francisco, California 94111-3824

XX (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Henderson & Caverly LLP, Rancho Santa Fe, California, following ordinary business practices. I am familiar with the practice of Henderson & Caverly LLP for collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Rancho Santa Fe, California on July 14, 2008.


QUYNH NGUYEN

EXHIBIT 7

REDACTED

EXHIBIT 8

REDACTED

EXHIBIT 9

Kenefick, Matthew

From: Maria Pum [mpum@hcesq.com]
Sent: Tuesday, July 15, 2008 6:34 PM
To: Kenefick, Matthew
Cc: Kristen Caverly; Gebhardt, Robert C.
Subject: RE: Familymeds

Matt--

We already agreed to move the date for the hearing once, which is why it is now pending for August 20. We don't see the need to agree to your proposed continuance because your motion may well prove to be moot if the judge rules in our favor on our summary judgment motion. If you are committed to bringing a motion seeking to leave to dismiss the cross-complaint, we would agree to having the matter heard on August 20--assuming the court's schedule would accommodate having both hearings on that date. That way the motion for summary judgment could be ruled upon and if the ruling on the motion for summary judgment does not dispose of the case, you could then argue your motion for leave to dismiss the cross-complaint without prejudice.

Maria K. Pum
Henderson & Caverly LLP
P.O. Box 9144 (all US Mail)
16236 San Dieguito Road, Suite 4-13
Rancho Santa Fe, CA 92067
Tel: (858) 756-6342
Fax: (858) 756-4732
Email: mpum@hcesq.com

From: Kenefick, Matthew [mailto:MSK@JMBM.com]
Sent: Tuesday, July 15, 2008 3:52 PM
To: Maria Pum
Cc: Kristen Caverly; Gebhardt, Robert C.
Subject: RE: Familymeds

Will you then stipulate to continuing the hearing on the Motion for Summary Judgment to allow the Court sufficient time to decide Familymeds Inc.'s motion for an order authorizing Familymeds Inc. to dismiss its Cross-Complaint from the first action without prejudice?

thank you,
-Matt

Matthew Kenefick for
JMBM | Jeffer, Mangels, Butler & Marmaro LLP
Two Embarcadero Center, 5th Floor San Francisco, California 94111
(415) 984-9677 Direct
(888) 430-5785 Fax
MKenefick@jmbm.com

EXHIBIT 9

7/30/2008

JMBM.com

From: Maria Pum [<mailto:mpum@hcesq.com>]

Sent: Tuesday, July 15, 2008 3:41 PM

To: Kenefick, Matthew

Cc: Kristen Caverly

Subject: Familymeds

Matt:

I got the message you left yesterday requesting that we agree to allow Familymeds to dismiss the counterclaim and cross-complaint without prejudice. We do not agree to such a dismissal, if it is without prejudice.

Maria K. Pum

Henderson & Caverly LLP

P.O. Box 9144 (all US Mail)

16236 San Dieguito Road, Suite 4-13

Rancho Santa Fe, CA 92067

Tel: (858) 756-6342

Fax: (858) 756-4732

Email: mpum@hcesq.com

7/30/2008

EXHIBIT 10

JEFFER, MANGELS, BUTLER & MARMARO LLP
ROBERT C. GEBHARDT (Bar No. 48965), rcg@jmbm.com
MICHAEL A. GOLD (Bar No. 90667), mag@jmbm.com
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Attorneys for Defendant and Counterclaimant FAMILYMEDS
GROUP, INC., f/k/a DRUGMAX, INC., a Nevada corporation and
Cross-Complainant FAMILYMEDS, INC., a Connecticut
corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MCKESSON CORPORATION, a Delaware
corporation,

Plaintiff,
v.

FAMILYMEDS GROUP, INC., f/k/a
DRUGMAX, INC., a Nevada corporation,

Defendant.

FAMILYMEDS GROUP, INC., f/k/a
DRUGMAX, INC., a Nevada corporation,

Counterclaimant,
v.

MCKESSON CORPORATION, a Delaware
corporation,

Counterdefendant.

FAMILYMEDS, INC., a Connecticut
corporation,

Cross-Complainant,
v.

MCKESSON CORPORATION, a Delaware
corporation,

Cross-Defendant.

CASE NO. CV07-5715 WDB

**NOTICE OF MOTION AND MOTION FOR
ORDER GRANTING FAMILYMEDS, INC.
LEAVE TO DISMISS CROSS-COMPLAINT
WITHOUT PREJUDICE; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

FRCP 41(a)(2)

Accompanying papers: Kenefick Declaration;
and (Proposed) Order

Time: August 20, 2008
Date: 1:30 p.m.
Place: Ctrm. 4
1301 Clay St., 3d Floor
Oakland, CA
Judge: The Hon. Wayne D. Brazil

Complaint filed: Nov. 9, 2007
Counterclaim filed: Dec. 17, 2007
Cross-Complaint Filed: Dec. 17, 2007
Trial date: none set

JMBM
Jeffery Mangels
Butler & Marmaro LLP

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CV07-5715 WDB
MOTION FOR LEAVE TO DISMISS CLAIMS
WITHOUT PREJUDICE

EXHIBIT 10

NOTICE OF MOTION

PLEASE TAKE NOTICE: that on August 20, 2008, at 1:30 p.m., before the Honorable Wayne D. Brazil in Court Room 4 of the above-referenced court located at 1301 Clay St., 3d Floor, Oakland, California, Defendant and Counterclaimant Familymeds Group, Inc., f/k/a Drugmax, Inc., a Nevada corporation ("**FM Group**") and Cross-Complainant Familymeds, Inc., a Connecticut corporation ("**FM Inc.**") (collectively, "**Familymeds**") will make a motion to this Court for an order granting FM Inc. leave to dismiss its Cross-Complaint without prejudice.

MOTION

Familymeds hereby make a motion to this Court for an order granting leave to dismiss from the matter of *McKesson Corp. v. Familymeds etc.*, United States District Court, Northern District of California Case Number CV07-5715 WDB, filed on November 9, 2007 (the "**First Action**") the Cross-Complaint of FM Inc. against McKesson Corporation ("**McKesson**") for an accounting in equity (the "**Cross-Complaint**") without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) in light of this Court's Order Re May 5, 2008, Case Management Conference (the "**May 5 Order**") and the related matter of *Familymeds Inc. etc. et al. v. McKesson etc. et al.*, United States District Court, Northern District of California Case Number CV08-2850 WDB, filed on June 6, 2008 (the "**Second Action**") (this "**Motion**").

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///

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

McKesson filed in the First Action a motion to dismiss, requesting this Court order FM Inc. to either file a motion to join the First Action, or to re-file the claims asserted in the Cross-Complaint as a second lawsuit. The invariable result of FM Inc. filing a second lawsuit would be that FM Inc. would dismiss its Cross-Complaint from the First Action without prejudice.

In ruling on McKesson's motion to dismiss, this Court directed FM Inc. to either file a motion to join the First Action, or to file a separate lawsuit. FM Inc., therefore, filed its claims against McKesson as a separate lawsuit. FM Inc. now seeks to dismiss the Cross-Complaint from the First Action - the inevitable result of the relief requested by McKesson's motion to dismiss. McKesson, however, will not stipulate to FM Inc. dismissing its Cross-Complaint without prejudice, thereby necessitating this Motion.

By this Motion, Familymeds requests that this Court allow FM Inc. to dismiss the Cross-Complaint from the First Action without prejudice so that the claims which were asserted therein may proceed in the Second Action. This is the exact result McKesson requested in its motion to dismiss, is the next step in effectuating this Court's May 5 Order, and will not prejudice McKesson.

II. BACKGROUND

A. The First Action

The Complaint. On November 9, 2007, McKesson filed in the First Action its Complaint for Breach of Contract against FM Group to enforce amounts allegedly due and owing from FM Group to McKesson (the "**Complaint**"). See Complaint attached as Exh. 1 to the Kenefick Decl.¹

The Counterclaim. On December 17, 2007, Familymeds filed their Counterclaim for Specific Performance of Contract and Accounting; Cross-Complaint for Accounting seeking an accounting under contract and in equity (the "**Counterclaim**"). See Counterclaim attached as Exh. 2 to the Kenefick Decl. at ¶¶ 21-40, p.4, line 7 through p.6, line 3.

¹ The accompanying Declaration of Matthew S. Kenefick and Request for Judicial Notice in Support of Motion for Order Granting Familymeds, Inc. Leave to Dismiss Cross-Complaint Without Prejudice (the "**Kenefick Decl.**").

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1 The Counterclaim includes, among other things, a Cross-Complaint by FM Inc. against
2 McKesson for an accounting in equity (the "**Cross-Complaint**"). See Counterclaim ¶¶ 36-40, p.5
3 line 18 through p.6 line 3.

4 **The Motion To Dismiss.** On January 14, 2008, McKesson filed its Motion to Dismiss
5 Counterclaim for Specific Performance of Contract and Accounting and Cross-Complaint for
6 Accounting (the "**Motion to Dismiss**"). See Kenefick Decl. Exh. 3. In the Motion to Dismiss,
7 McKesson requested the Court to order FM Inc. to either file its claims as a separate lawsuit or to
8 file a motion for FM Inc. to join the First Action:

9 ...If FM Inc. would like to sue McKesson, it can bring a lawsuit or
10 move to intervene in this action...

11 See Reply² at p.10 lines 15-16.

12 Thus, McKesson requested this Court to order FM Inc. to bring its claims in a second
13 lawsuit. The invariable result of such an order is that FM Inc. would then need to dismiss its Cross-
14 Complaint from the First Action without prejudice.

15 **May 5 Order.** On May 5, 2008, the Court heard and denied McKesson's Motion to Dismiss
16 without prejudice, and issued its May 5 Order which, as McKesson requested in its Motion to
17 Dismiss, directed FM Inc. to either file a motion to join the First Action, or to file a separate action.
18 See Kenefick Decl. Exh. 4.

19 **Motion For Summary Judgment.** On June 4, 2008, McKesson filed its Motion for
20 Summary Judgment, or, in the Alternative, Summary Adjudication (the "**MSJ**"). Kenefick Decl.
21 Exh. 5. In the MSJ, McKesson seeks, among other things, adjudication of the Cross-Complaint. Id.

22 **B. The Second Action**

23 **Second Complaint.** On June 6, 2008, Familymeds filed in the Second Action (the First
24 Action and Second Action are collectively referred to herein as the "**Actions**") their Complaint for
25 Specific Performance of Contract and Accounting (the "**Second Complaint**"). See Kenefick Decl.

26 ² The Reply of McKesson Corporation to Opposition to Motion Seeking to Dismiss
27 Counterclaim for Specific Performance of Contract and Accounting, and Cross-Complaint for
28 Accounting attached as Exh. 3 to the Kenefick Decl.

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1 Exh. 6. This is precisely what McKesson asked the Court to order in its Motion to Dismiss.

2 The Second Complaint includes a cause of action by FM Inc. against McKesson for an
3 accounting in equity. See Kenefick Decl. Exh. 6. Thus, as McKesson requested in its Motion to
4 Dismiss, and the Court ordered in its May 5 Order, FM Inc. brought its claims in a second lawsuit.
5 FM Inc. was then left to dismiss the Cross-Complaint from the First Action without prejudice to
6 effectuate the procedure contemplated by this Court's May 5 Order.

7 **C. Motion To Consider Whether Cases Should Be Related**

8 On June 12, 2008, Familymeds requested McKesson stipulate to the First Action being
9 designated as related to the Second Action. Kenefick Decl. ¶ 8, Exh. 7. McKesson would not
10 stipulate. Id. Accordingly, on June 16, 2008, Familymeds filed its Administrative Motion to
11 Consider Whether Cases Should be Related (the "**Administrative Motion**") on the ground that the
12 Actions involve common and overlapping issues of fact and law, and will involve common
13 evidence, witnesses, experts and parties. Id. On June 18, 2008, McKesson filed its opposition to
14 Familymeds' Administrative Motion. Id. On June 18, 2008, the Court entered its order granting
15 Familymeds' Administrative Motion, thereby designating the Actions as related and re-assigning the
16 Second Action to Judge Brazil. Id.

17 **D. The Request For A Stipulation To Dismiss The Cross-Complaint**

18 FM Inc. had re-filed its claims in the Second Action, as McKesson requested this Court
19 order FM Inc. to do. FM Inc., therefore, sought to dismiss the Cross-Complaint without prejudice,
20 leaving the Second Action to proceed.

21 Accordingly, on July 14, 2008, Familymeds requested that McKesson stipulate to FM Inc.
22 dismissing the Cross-Complaint from the First Action without prejudice. Kenefick Decl. ¶ 9, Exh.
23 8. Even though McKesson requested in its Motion to Dismiss that this Court direct FM Inc. to file
24 the Second Action, McKesson refused to stipulate to the dismissal of the Cross-Complaint without
25 prejudice, thereby necessitating this Motion.

26 Because portions of the MSJ address the Cross-Complaint, Familymeds requested
27 McKesson continue hearing on the MSJ to allow sufficient time for the Court to address
28 Familymeds' request for leave to dismiss the Cross-Complaint without prejudice. Kenefick Decl. ¶

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1 10, Exh. 9. McKesson denied this request as well. Id. McKesson, however, agreed to have this
2 Motion heard concurrently with the hearing on the MSJ. Id.

3 **III. LEGAL ARGUMENT**

4 A plaintiff has the absolute right and power to dismiss an action until the defendant serves
5 an answer or summary judgment motion. Federal Rules of Civil Procedure 41(a)(1) and 41(c).
6 Thereafter, the action may be dismissed at any time by stipulation of the parties. Federal Rule of
7 Civil Procedure 41(a)(1)(A)(ii); McCall-Bey v. Franzen, (7th Cir. 1985) 777 F.2d 1178, 1185. If,
8 however, the defendant will not stipulate to the dismissal, then the plaintiff may seek leave to
9 dismiss the action by motion to the court. Federal Rule of Civil Procedure 41(a)(2).

10 The primary purpose of requiring a court order for a dismissal following the service of a
11 motion for summary judgment is to prevent voluntary dismissals which unfairly affect the other
12 side. See Alamance Industries, Inc. v. Filene's, (1st Cir. 1961) 291 F.2d 142, 146. Thus, courts
13 generally allow dismissals without prejudice, unless the defendant will suffer "some plain legal
14 prejudice" as a result thereof. See Hamilton v. Firestone Tire & Rubber Co., Inc., (9th Cir. 1982)
15 679 F.2d 143, 145; Fisher v. Puerto Rico Marine Management, Inc., (11th Cir. 1991) 940 F.2d
16 1502, 1503; Brown v. Baeke, (10th Cir. 2005) 413 F.3d 1121, 1123.

17 **A. Familymeds Appropriately Seeks Leave To Dismiss Its Cross-Complaint To**
18 **Effectuate This Court's May 5 Order And The Relief McKesson Requested In**
19 **Its Motion To Dismiss**

20 In the May 5, Order, this Court directed FM Inc. to either file a motion to join its claims in
21 the First Action, or to file a separate action containing those claims. This is the result McKesson
22 requested in its Motion to Dismiss. FM Inc. did the latter with the Second Action. FM Inc. now
23 seeks the practical remedy of dismissing the Cross-Complaint from the First Action without
24 prejudice to clean-up the pleadings. This is the next step in effectuating this Court's May 5 Order.
25 This is entirely appropriate and will allow the First Action and Second Actions to proceed in the
26 manner that McKesson requested in its Motion to Dismiss.

27 ///

28 ///

1 B. Granting FM Inc. Leave To Dismiss The Counter-Claim Without Prejudice
2 Will Not Prejudice McKesson

3 Granting this Motion will not prejudice McKesson. The First Action is still in its early
4 stages, discovery has only been open for approximately two (2) months, and McKesson has not
5 even filed an answer in the Second Action. Any litigation of the issues in the Cross-Complaint will
6 directly transfer to the Second Action. Further, McKesson requested in its Motion to Dismiss that
7 this Court order FM Inc. to file the Second Action, which invariably involved FM. Inc. dismissing
8 the Cross-Complaint from the First Action. McKesson therefore should not be allowed to argue
9 that it is prejudiced by the very result it requested.

10 IV. CONCLUSION

11 McKesson requested that this Court order FM Inc. to re-file its claims against McKesson as
12 a separate lawsuit. This request invariably required FM Inc. to dismiss its Cross-Complaint from
13 the First Action without prejudice. In ruling on McKesson's Motion to Dismiss, this Court directed
14 FM Inc. to do as McKesson requested and file a separate lawsuit.

15 FM Inc. now seeks to dismiss its Cross-Complaint from the First Action without prejudice.
16 This is the exact result that McKesson requested in its Motion to Dismiss, and what was
17 contemplated by this Court's May 5 Order. McKesson, however, will not stipulate to this, and
18 therefore, Familymeds was required to bring this Motion.

19 This Court has the discretion to allow FM Inc. to dismiss the Cross-Complaint without
20 prejudice, and given the circumstances involved, should do so. This is the practical next step to
21 effectuating this Court's May 5 Order and the relief McKesson requested in its Motion to Dismiss.
22 McKesson will not be prejudiced by FM Inc. dismissing the Cross-Complaint without prejudice and
23 should not be allowed to argue otherwise because this is the precise result it requested in its Motion
24 to Dismiss.

25 Accordingly, this Court should grant Familymeds' Motion and should allow FM Inc. to
26 dismiss the Cross-Complaint from the First Action without prejudice.

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1 DATED: July 16, 2008

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